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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 377

**PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON, AND SNAP-ON
TOOLS CORPORATION, PETITIONERS.**

**AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 21, 1944.

CERTIORARI GRANTED OCTOBER 16, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. _____

PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION,

Petitioners,

vs.

AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY,

Respondent. 25

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8392

AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY,

Plaintiff-Appellant

v.s.

PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION,

Defendants-Appellees

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

THE QUINCY HORN WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO 20

TRANSCRIPT OF RECORD FILED AUG. 30, 1943
PRINTED RECORD

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8392

**AUTOMOTIVE MAINTENANCE MACHINERY
COMPANY**

Plaintiff-Appellant.

vs.

**PRECISION INSTRUMENT MANUFACTURING COM-
PANY, KENNETH R. LARSON AND SNAP-ON TOOLS
CORPORATION.**

Defendants-Appellees.

Appeal from the District Court of the United States for the
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No. 2,219 (Reissue)—H. W. Zimmerman, November 3, 1942	1184
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Order allowing certiorari

1075 Thereupon the Automotive Maintenance Machinery Co., to maintain the issues on its part, introduced the following evidence, to-wit:

1076 Mr. Lindsey: Mr. Hobbs.

May it please the court, I have about twenty letters which I wish to offer in evidence, and, in order to save time, I have prepared a list—I have furnished a copy of it to opposing counsel—and designated the particular numbers to be assigned to these exhibits and, unless your Honor has some objection, I suggest I hand the original exhibits, together with the list, to the reporter and consider these particular exhibits as having been offered in evidence. I think we can save a lot of time.

The Court: Very well.

Mr. Lindsey: There is no objection, is that correct, Mr. Freeman?

Mr. Freeman: That is correct.

1077 (Said documents were thereupon received in evidence by the court and marked, respectively, PLAIN TIFF'S EXHIBITS NOS. 29, 30, 31, 32, 33, 34, 35, 50, 36 and 16, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49.)

MERVILLE K. HOBBS, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Lindsey.

Q. Please give your full name, Mr. Hobbs.

A. Merville K. Hobbs.

Q. You are a member of the firm of Haight, Goldstein & Hobbs?

A. That is right.

Q. And you are the Mr. Hobbs in that firm name, are you not?

A. Yes, sir.

Q. How long have you been practicing law, Mr. Hobbs?

A. Since 1923.

1078 Q. How long in Chicago?

A. Since 1923.

Q. How long have you been associated with Mr. George I. Haight in the practice of law?

A. Well, since 1923, which makes twenty years next month.

Q. And do you belong to any legal associations or societies?

A. Yes, sir. The American Bar Association; the Chicago Bar Association; the Illinois Bar Association; and the Patent Law Association, and I am chairman of one of the standing committees of the latter association.

Q. Now, you are somewhat familiar with some of the phases of this litigation, are you not, Mr. Hobbs?

A. Somewhat, yes, sir.

Q. When and where did you first meet Kenneth R. Larson and Walter Carlsen?

A. In my office in The Rookery Building and a reference to my time sheets indicates that the day was the 29th of November, 1940.

Q. Have you your time sheets with you and are opposing counsel at any time free to refer to them if they wish?

A. Oh, yes.

1079 Q. Did you know they were coming to your office or did they just drop in casually?

A. No, I knew they were coming to my office.

Q. How did you know they were coming to your office?

A. On the same day and, in fact, just shortly before they came, I had a telephone call from Mr. Alberts.

Q. Does your time sheets show that telephone call from Mr. Alberts?

A. Yes.

Q. Would you mind reading that, Mr. Hobbs?

A. Well, the time sheet is headed with my name. That indicates it is mine as compared to others in the firm. It is dated November 29, 1940. Under the heading, "Engaged," I read this:

"Precision Instrument Manufacturing Company, 1846 Minor Street, Des Plaines, Illinois."

The fact that the address is there indicates that this was the first time I had contact with the people because I was getting their name and address. Then it goes on:

"phone conference with Mr. Alberts. Personal conference with Messrs. Larson and Carlsen."

1080 Q. What did Mr. Alberts say when he telephoned you?

A. Mr. Alberts told me there was an Interference pend-

ing, which he identified by name. He told me the parties whose applications were involved, namely, Larson and Zimmerman. He told me who the assignees of the respective applicants were. He told me the attorneys involved and he told me that the day before he had been at Mr. Fidler's office together with his client, Mr. Johnson of Snap-On, that there had been revealed to them the Thomasma affidavit.

When I say "revealed to them," I don't mean to indicate they read it or read it all or whether they were told what its contents were, I don't know.

Mr. Alberts told me he understood there was in this affidavit statements of Thomasma which attacked the originality and the date of the Larson drawings which Mr. Alberts was relying upon to carry, to establish the date of Mr. Larson.

Mr. Alberts stated that he was afraid that the drawings he was relying upon were not true drawings, that they were misdated.

He told me he had been utterly unaware of that fact, if it were a fact, that he had assumed they were genuine.

He said that he had talked with his client and that they were—that is, with Mr. Larson and Mr. Carlsen—and that they were willing to concede priority; that he thought the interference ought to be settled; that he had suggested my name to represent Mr. Larson and Mr. Carlsen and that they would like to come over to see me and that the reason he couldn't handle it on behalf of Larson and Precision Company was because there was a contract between these persons and Snap-On, his regular client, and he was afraid that a conflict might come between their interests, that is, Snap-On on the one hand and Precision and Larson on the other hand, and, hence, he had advised them to get different counsel.

Q. Now, did Mr. Alberts tell you in this telephone conference that Larson and Carlsen or either of them, had confessed to Mr. Alberts that they had committed perjury?

A. No, he didn't tell me that.

Q. Now, how long did this conference which you had on November 29th with Larson and Carlsen last?

A. I can't tell you that because there is no division on

my time sheet between the items of 'phone conference with Mr. Alberts and the personal conference with Messrs. Carlsen and Larson but the two of them together are noted as two hours.

Q. And what was said in the conference between you, Carlsen and Larson, Mr. Hobbs?

A. Well, these gentlemen came in and introduced themselves to me. I had expected them to come.

They told me what Mr. Alberts had told me, so far as the pendency of the Interference was concerned; that Mr. Alberts had represented them and that your office, and I believe they specified Mr. Fidler, had been representing Zimmerman; that some proofs had been taken; that they testified; that Mr. Alberts had told them about the Thomasma affidavit; that they were willing to concede priority.

I was interested in more than a concession of priority because of the fact that if that alone were done, it would be very possible that, if they had any business, that that would be the end of it.

So, I proceeded to inquire of them about their business, what they had sold, whether they had orders on hand to sell, what commitments they had and their contract with

Snaps. On which Mr. Alberts had mentioned to

1083 me. Mr. Larson at the same time at this conference told me about a new wrench he had or was developing, and I don't profess to remember his exact words obviously, but he told me that he wasn't much longer interested in the application that was in Interference because of this new wrench and that he would like to be kept in business in the wrench he was then selling until he got the new wrench on the market, he had material ordered and he didn't want to have that material come and have to take it and not have anything to use it for.

I told Mr. Larson at the time that we would take the commission to try to settle the Interference.

And they also told me, Mr. Larson or Mr. Carlsen, or both of them, that Thomasma, about whom Mr. Alberts had told me, had been one of the incorporators of Precision and owned a block of stock.

The number of shares I cannot recall except by reference to some of my letters. I do recall they said it was one-third of the stock of the company.

They were not in a very kindly frame of mind about

Mr. Thomasina and thought he had double crossed them when they wanted to get their stock back.

1084 Q. Now, at this conference did Mr. Larson and Mr. Carlsen tell you they had perjured themselves?

A. No, they didn't tell me and, on the other hand, I didn't inquire because, as I conceived my obligation in the settlement of this matter, it was immaterial whether they had perjured themselves or not. I was interested in keeping them in business and with giving as little as I had to to their opponents.

Q. Have you ever read any of the Interference testimony given by Mr. Larson and his witnesses?

A. Not a word of it, sir.

Q. Have you ever read the Thomasina affidavit?

A. No, I have never read the Thomasina affidavit. I heard Mr. Ooms read a few words of it this morning while I was in the court room.

Q. Now, after your conference with Larson and Carlsen on November 29th, what did you do?

A. I wrote, I believe it was the same day, to Mr. Fidler and told him we were engaged in the matter; that we thought it was a case where a settlement could be reached and the clients had indicated that and I would like to see him about it.

I think I said in the letter, too, that when he got 1085 the letter to call me and we would arrange to see each other.

Q. Did you get together?

A. We got together and it was at Mr. Fidler's home. I had a telephone call from him in which he told me he was at home and would be there some time, so, I went out to Mr. Fidler's home.

Q. Mr. Hobbs, I am handing you a volume of correspondence, copies of exhibits, which have been offered in evidence, the exhibits being Plaintiff's Exhibit 16 and Plaintiff's Exhibits 29 to 50, inclusive, and Defendant's Exhibits 23, 63, 66, 68 and 73.

I am handing you these exhibits to save time, Mr. Hobbs, and I will ask you if you will just glance through those and state whether or not those letters are all letters, that is, a large part of it, letters and correspondence which passed between you and Precision and Larson, between you and Mr. Alberts; between you and Mr. Fidler and

myself, and between Mr. Alberts, Mr. Fidler and myself, so far as you were aware of the correspondence?

(Handing papers to witness.)

A. I won't take the time, Mr. Counsel, unless you 1086 wish it to inspect everyone of these, word for word.

Q. You can look at them later.

A. As I skim through them, I think this is the correspondence to which you refer. I see photostats of my signature which I recognize and our letterhead.

Q. Did you give the date of the conference which you had with Mr. Fidler?

A. No. It was on the 2d of December, as reference to my time sheets indicates to me.

Q. Who was present at that conference?

A. Mr. Fidler, Mr. Edward Haight, and myself. I asked Mr. Edward Haight to go out with me to see Mr. Fidler for two reasons:

In the first place, I have a great deal of confidence in his judgment and I wanted to talk to him about the matter and get his reaction to what I had in mind to propose to Mr. Fidler.

And, secondly, I wanted him to be generally familiar with what was going on in this case because I was quite busy at the time and had anticipation of two or three trips out of town and wanted somebody in the office to carry on. In fact, during this time, I did go out of town.

1087 Q. Now, does your letter to Mr. Larson of December 4, 1940, Defendants' Exhibit 63, relate to the conference which you had with Mr. Fidler?

A. Yes. Previous to the writing of this letter I had talked with Mr. Larson and the letter indicates that it is a summary to Mr. Larson, a written one, of what I had told him that morning about my conference with Mr. Fidler on the previous day.

Q. Now, will you please read to the court the first paragraph of this letter of yours of December 4th and state whether that contains the essence of what you discussed with Mr. Fidler in the previous conference you had with him?

A. The first paragraph reads:

"This letter reviews the conference of some length which we had this morning. As we told you, we had a conference on Monday with Mr. Fidler. We told him we were not

interested in reading the record or making any investigation of facts further than was necessary to establish what was to be done to establish the interests of everyone. This seemed to be Mr. Fidler's viewpoint. We told him that we were willing to concede priority; that we wished 1088 an appropriate release of damages, and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments. We believe that Mr. Fidler is in agreement on principle.

Now, that does represent and summarizes the conference which I had with Mr. Fidler at which Mr. Edward Haight was present.

Q. Now, in that conference was there any discussion of the Larson testimony or the Thomasma affidavit?

A. No, there wasn't. Mr. Fidler started to tell me about the testimony and about the Thomasma affidavit and I told him I wasn't interested in that, that my commission was to settle this interference and that I didn't think it was relevant or pertinent to what I was trying to do.

Q. Did Mr. Fidler say anything about perjury at all in that conference?

A. No. I stopped him. What I am trying to indicate to you is, I stopped him from talking about it. I didn't want to hear the conflict of testimony.

Q. At this conference did you offer or suggest that you would recommend to Larson that he offer and submit 1089 to us a simple concession of priority without any conditions attached?

A. No. That I was afraid to do and would still be afraid to do because of the fact that if a simple concession of priority were filed, I could foresee that the next day, or as soon as you could, you might issue the Zimmerman patent and then you would sue us for patent infringement and then the customers of Precision would be liable to charges of infringement for their use, they would be back at Snap-On and Snap-On would be back at Precision.

I wasn't willing to concede a priority without something to go with it.

Then I had this thought in my mind because the litigation was rather fresh in my mind, that it had been represented to me that Mr. Thomasma was an employee of Automotive, and that he was one of the incorporators of Precision, and I was recalling what had happened in *A. O. Smith vs. Petroleum Iron Works* litigation I was in and

as I could view it, you might get the idea if you knew of the decision in that case that your sole remedy did not lie in patent infringement, but that you might sue for breach of confidential relationship and I had to do something, as I saw the rights of my client, to protect him and his customers against such action.

Q. Will you please refer to your letter to Mr. Fidler of December 6th, that being Defendants' Exhibit 66?

Mr. Lindsey: If your Honor please, I have a few copies here of the most important letters. I didn't have an opportunity to make a full set.

(Handing papers to court.)

Q. Do you recall that letter to you, Mr. Hobbs?

A. Yes, I do.

Q. In that letter you suggest a concession of priority on the part of Larson and an appropriate release to Larson and Precision coupled with a non-exclusive license of a limited nature under the Zimmerman applications back to Larson and Precision.

Isn't that the substance of your proposal?

A. Yes, with the foregoing condition in the last paragraph that we get the stock back from Thomasma.

And I wrote to Mr. Thomasma making a demand for that stock but I hadn't heard from him and so I make the suggestion in this letter you might be able to help us to get that stock back, inasmuch as you had secured an affidavit from him.

1091 Q. Now, will you please refer to Mr. Fidler's letter to you of December—

A. I should add, as I look at the second page of that letter, Mr. Lindsey, that it isn't my signature appearing there. It is that of Miss Savage, my secretary. It was probably signed after I left the office or after I had went out of town.

Q. But you did dictate the letter?

A. I did dictate the letter, yes. My initials are on it as the dictator.

Q. Now, will you please refer to Mr. Fidler's letter to you of December 6th, 1940, Plaintiff's Exhibit 29?

To save time, I will read the second paragraph of that letter:

"I took up the matter with Mr. Wacker as soon as possible after our conference last Monday, and he informed me that it would be satisfactory to terminate the Interfer-

ence as proposed by you, —the letter was being written to you, Mr. Hobbs, —namely; by Larson conceding priority to Zimmerman and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain 1092 royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given, and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled.

Now, that was the proposition which you had suggested to Mr. Fidler originally in the conference which you had at his home, is it not?

A. That is correct if by proposition you mean general terms and principles of a settlement.

Q. General suggestions, yes. And that suggestion did not come from Mr. Fidler, it came from you primarily, did it not?

A. Oh, it came from me because those suggestions were made essentially as they are recited in this letter to Mr. Fidler at his home.

Q. Does your worksheet show you had two conferences over the telephone with me on December 11, 1940, Mr. Hobbs?

A. Yes, sir.

"Conference with Larson and 'phone conferences with Alberts and Lindsey."

Q. Will you tell the court what took place over the 1093 telephone in our conversation?

A. Some of that conversation I remember very distinctly and some of it not so well.

The part I don't remember so well, but I think my recollection is accurate, is that you said you were just getting into the matter and you had heard from Mr. Fidler about our talks with each other and communications about a settlement; that you had a proposition to make and it was a take-it-or-leave-it 24-hour proposition.

That made me mad and I told you I didn't care if you or your client was Hitler, you couldn't push me around and I was through negotiating if that was the basis upon which negotiations were to proceed.

I was very angry. You were, too. My secretary heard the telephone conversation and she told me I wasn't a gentleman and that I should apologize to you and you either called me or I called you later in the day and we did

apologize to each other and I invited you to come to the Union League Club next day to have lunch, you and Mr. Fidler, and we would talk about settlement and we did have luncheon the next day.

Q. Now, I hand you Plaintiff's Exhibit 59, which is entitled:

1094. "Minimum terms for total settlement."

Do you recall having seen that before this trial?

A. No, I have never seen that before, Mr. Lindsey. I take it your question involves the original as well as the photostat.

Q. Oh yes.

A. No, I have not seen that.

Q. I might say we are putting in photostats and originals and copies rather indiscriminately.

A. Yes. I don't recall, Mr. Lindsey, that I even let you state a proposition to me after you told me you had one that had to be taken in 24 hours.

Q. Now, what transpired at the conference on December 12th at the Union League Club which was attended, as I recall, by Mr. Fidler and yourself and me?

A. I can recall that luncheon very clearly for two reasons:

In the first place, we had venison stew, which was a rather unusual meal, and, in the next place, I introduced you and Mr. Fidler to Catherine Keeler.

After having heard a couple of letters read in evidence in the court room this afternoon, I now understand why you and Mr. Fidler were pleased to meet Mrs. 1095 Keeler.

We talked about the settlement of the lawsuit. You wanted 10 per cent royalty and I told you that was simply out of the question; they couldn't pay it.

We had offered you three per cent. I think the 3 per cent was only on unfilled orders and you wanted 10 per cent on everything that had been made as well as what would be made and that was out of the question.

That was our principal discussion and you seemed to think I was sincere in my statement that 10 per cent was out of the question and you and Mr. Fidler told me that you would try to figure out some other basis of payment than 10 per cent which we might be able to meet.

Q. And as a result of that meeting on December 12th, we submitted to you a joint contract, that is, where Auto-

motive was one of the parties and Snap-On and Precision other parties, is that correct?

A. Yes, on the next day you and Mr. Fidler came to my office, Mr. Alberts came to my office, and the four of us conferred there and you had a drafted contract.

It was, as I recall it, a three-party contract, that is, Snap-On as one and Precision and Larson as the second and Automotive as a third, all in one document.

1096 Q. And Mr. Alberts objected to that. He wanted to have a contract between your client and Snap-On separate from the settlement between Precision and Larson on the one hand and Automotive on the other.

Q. That was the meeting on December 20th in your office?

A. No, that was the day after our luncheon.

Q. I mean December 13th? That was at your office?

A. Yes, sir.

Q. And Mr. Fidler and Mr. Alberts and you and I were present, is that correct?

A. That is right.

Q. And there was a general discussion of terms at that time, a further discussion?

A. There was a discussion of terms and going over your form of contract.

What I am about to say now is a conclusion and reconstruction and not my recollection but it was apparent that that contract was not satisfactory to Mr. Alberts and me or me because we did not get together.

Q. And was there any discussion at that conference of any testimony that Larson had taken or of the Thomasma affidavit?

1097 A. No, Mr. Lindsey, because I was still going on the basis I started out that I wasn't interested in the conflict in testimony between Mr. Larson and Mr. Thomasma.

Q. Now, you received, did you not, on or about December 17th a copy of Mr. Alberts' letter to Mr. Fidler dated December 17, 1940, marked Defendants' Exhibit 73?

A. I have, I got a copy of that letter.

Q. And in that letter Mr. Alberts devoted several pages to the matter of who was the inventor of another wrench, that is Larson and Walraven, and then set forth some proposed terms which had not been discussed before

in connection with the question of settlement, is that correct?

A. That is correct. I think you should add for perfect accuracy that some of the things in Mr. Alberts' propositions had been discussed.

Q. Yes, but some of them had not?

A. And some of them had not.

Q. Now, you had also received, you also received, did you not, a copy of my letter to Mr. Alberts of December 18th, Plaintiff's Exhibit 26, together with a notice of taking testimony?

A. I have a photostat here of a letter which I 1098 think is yours to Mr. Alberts dated December 18th but it is marked Exhibit 30. Are we talking about the same one?

Q. Exhibit 30? I am sorry. I got the numbers mixed up. You are correct. You received a copy of that?

A. Yes, I received a copy of that letter. I don't recall whether I got a copy of the notice of the taking of testimony.

Q. Now, will you please refer to Exhibit 32, which is a letter from Mr. Alberts to you?

A. Yes, I remember that letter.

Q. Now, you will note in the middle of the page Mr. Alberts refers to withdrawing as attorney for Kenneth R. Larson in view of the alleged charges and countercharges that certain testimony of Larson and Carlson was not the entire truth. Do you know what those charges and countercharges were?

A. Only as they were recited to me by Mr. Alberts when he first called me and told me of the Thomasma affidavit.

Q. Now, you will recall that a copy of our notice of taking testimony accompanied this letter of Mr. Alberts to you of December 18th?

A. Yes, and my recollection is clearer on the enclosure of a substitute power of attorney.

1099 Q. Yes.

A. I said a moment ago I remembered this letter very well because it was the second time in that matter that my anger flared up because Mr. Alberts attempted to accept service of that notice with my name, being some legend at the bottom of it, which I saw and recited in one of my letters to Mr. Larson. It wasn't the fact I had been substituted.

In fact, I had told Mr. Alberts and Mr. Larson both more than a week before I couldn't go on with the interference or any litigation that might grow out of it and told them my reasons.

Q. And in your letter to Mr. Alberts of December 19, 1940, Exhibit 34, you say:

"I told Mr. Larson a week or more ago that if the above matter could not be settled, we were not in a position to proceed to represent him. We made the same statement to you last Saturday, the 14th, in the presence of Mr. Fidler and Mr. Lindsey. We are therefore unwilling and unable to accept or to file your substitute power of attorney, which we return herewith."

Now, do you recall advising Mr. Fidler and myself 1100 that you would not handle the Interference in this conference which we had previous to December 19, 1940?

A. Yes; I have a recollection of that.

I have a more permanent recollection of the fact that the statement that I sent to the client was for a retainer for settlement.

Q. Do you have a copy of that statement with you, Mr. Hobbs?

A. No, I have our office copy.

Q. Would you mind reading that statement into the record, please?

A. This statement is dated December 4, 1940:

"Precision Instrument Manufacturing Company, 1846 Minor Street, Des Plaines, Illinois.

"To retainer for professional services re settlement of Larson-Zimmerman Interference.

"Charges to be credited against the retainer, \$250.00, which was promptly paid.

Q. Now, was our action in serving the notice of taking depositions and the demand for the production of this untranscribed testimony of Larson's and his witnesses justified, that is, the serving of that demand and no 1101 tie on Mr. Alberts rather than on you?

A. Well, you certainly—

Mr. Freeman: That is certainly objected to.

The Court: Objection sustained.

Mr. Lindsey: Q. Now, will you please refer to your letter to Precision of December 18th, 1940, Plaintiff's Exhibit 33.

A. Yes, I have it.

Q. And note on the second page you say:

"Quite properly, therefore, in serving a notice of the taking of depositions, the attorneys for AMMCO and Zimmerman addressed it to the attorney of record in the Interference, sending a copy to us, merely to keep you fully advised."

Now, the attorney of record in that case was Mr. Alberts, was it not?

A. Well, it wasn't I or my firm.

Q. But you say "to the attorney of record." At that time Mr. Alberts was attorney of record for Larson, was he not?

A. My point in answering as I did was that Mr. Alberts had so informed me. I have no personal knowledge of it.

Q. Now, what next happened, Mr. Holdbs?

1101 A. Well, after when?

Q. After you had received these letters, this letter of December 18th, for example, several of them. What happened after December 18, 1940? What was the next thing you did?

A. Well, the next thing I recall after the things or happenings on the 18th was the conference in your office, I mean, the office of your firm, with Mr. Alberts present, Mr. Fidler present, you present and I was present.

That conference was in Frank Parker Davis' personal office and we there discussed the terms of settlement, not in generalities but specifically, and we dictated and wrote out in longhand paragraphs and parts of contracts.

You had split up the one contract into two. We had a draft before us to work with. I had seen Mr. Larson the day before in my office and knew pretty well what I had wanted to do.

Mr. Fidler excused himself on one or two occasions to phone to your client. I am using the word "you" as plural.

And I think Mr. Alberts also excused himself from the room saying he was going to phone to Snap-On.
1102 And, at the conclusion of the conference, we were pretty much in agreement. You were to get the document into final shape and we were to get the papers executed.

Among the things that had to be done were to draft mutual releases between Thomasma and Precision and I

drafted that. There were assignments to be drafted and I drafted some of those, I think, and Mr. Alberts others.

Q. And then the agreements were submitted to you by Mr. Fidler on December 23d, were they not?

A. Well, they were.

Q. I will refer you, Mr. Hobbs, to Mr. Fidler's letter of December 23, 1940, Plaintiff's Exhibit 36.

A. I am looking at the letter and that would seem to fix the date when the drafts were sent to me because the letter is addressed to me and says:

"I enclose two copies of the Automotive Precision-Larson agreement."

Q. Now, in this conference on December 20th in the office of Mr. Davis, was there any discussion of the Larson testimony or of the Thomasma affidavit, as you recall?

A. No, I do not recall any.

Q. Now, do you recall a conference or a meeting 1103 which was held in our offices at which were present Mr. Fidler, Mr. Alberts, yourself and me the day before Christmas of 1940?

A. Yes, sir.

Q. Where was that conference held? In what part of our offices?

A. Also in Mr. Frank Parker Davis' personal office.

Q. What was the occasion for that meeting, Mr. Hobbs?

A. We had the papers executed by our respective clients and Mr. Larson and Mr. Carlsen were at my office in the morning of that day to sign the papers that they were required to sign in the settlement.

Mr. Edward Haight went past the door and I hailed him. He came in and talked with us generally about the settlement.

After my clients had finished signing the documents they were required to sign, I then went over to Mr. Alberts' office. I don't know whether it was immediately afterwards or whether I had lunch between times.

But I went to Mr. Alberts' office and we took a cab down to your office and he had his papers and I had mine and we waited in the reception room until you and Mr. Fidler came out and you were in the process of having your 1104 Christmas party and you took us into Frank Parker Davis' office and we exchanged documents.

There were three things that are in my mind that weren't their completed. The first was that the contract provided

that my client was to be licensed to fulfill existing orders and there was some limitation as to the amount and beyond that amount then royalty.

So, I had to have a statement of what was on order and I hadn't gotten it from my client yet and so I couldn't give it to you on the 24th.

The second thing was that an objection was made to the assignments that we proffered you because they were not acknowledged assignments and wouldn't be self-proving under the statutes.

And then the third thing was that Mr. Larson in the conference in the morning in my office had raised an objection to one of the provisions and his point was very well taken because it called upon Precision to do something they would be unable to do by way of making a report of orders and, so, he wanted that changed and I asked you gentlemen to change it and you said you would get Mr. Wacker to agree to that change and without rewriting the document 1105 you would have him initial the change and with the exception of those three things, that terminated the settlement.

Q. Now, in that regard will you please refer to Mr. Fidler's letter to you of December 28th, Plaintiff's Exhibit 39, in which Mr. Fidler says:

"I am pleased to return herewith the fully executed copy of the Automotive Precision-Larson agreement."

and then later he said:

"As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready."

Now, I will ask you, did you read Mr. Ooms' opening statement made to the court on March 27th?

A. Yes, I did.

Q. Were the implications in his statements with respect to those clean-up matters warranted or not?

A. The clean-up matters I—

Mr. Freeman: I object to that.

The Court: Objection sustained.

Mr. Lindsey: Q. What were those clean-up matters Mr. Fidler refers to?

A. The clean-up matters I understood Mr. Fidler 1106 to be referring to were the correction of the assignments and the furnishing of the statement of wrenches on order and Mr. Larson—Mr. Alberts and I were cooperat-

ing in correcting the assignment before we ever got Mr. Fidler's letter.

Q. Now, will you please refer to Mr. Fidler's letter of December 26, 1940 to Mr. Raftery, the reporter who Mr. Alberts had employed to take the Larson testimony?

The letter indicates you received a copy. Do you recall that?

A. Well, I recall a copy of a letter written to Mr. Raftery but I don't find it in this—What is the exhibit number?

Q. It is Exhibit 16, Mr. Hobbs. If I may just step around here—this is the letter (indicating).

Now, you will note at the top of the second page of this letter Mr. Fidler said:

"In terminating this matter, it was agreed that you would deliver up the foregoing material, as well as all copies of the transcript of such testimony now in your possession, to Mr. Alberts." Do you recall any such agreement?

A. Yes, I do, and—Well, I guess I have answered 1107 your question. Yes, I do.

Q. Now, just state what that agreement was and where it was reached, will you, Mr. Hobbs?

A. Well, when I first saw Mr. Fidler out at his home, I told him we did not want to go to the expense of having this testimony transcribed, the matter was going to be settled.

Hence, when it was settled, there was considerable of it that wasn't transcribed and this statement in the letter that it was agreed that the copies of the transcript in his hands and so forth would be delivered to Mr. Alberts was talked of either now on December 24th, but I think more likely on the 20th because on the 24th we were cleaning things up and getting ready to get home. I was anxious to get home that day.

Q. Was Mr. Alberts present or not when that agreement was reached, do you know?

A. Yes, he was present, if I am correct in my recollection it was either on the 20th or, 24th because he was present both of those days.

And I am sure that was the understanding because I had some responsibility for the fact that it wasn't transcribed.

1108 Q. Now, will you please refer to Mr. Fidler's letter to you on December 31, 1940, Plaintiff's Exhibit

23. It is a one-page letter toward the back of that volume, Mr. Hobbs.

A. Yes, I have it.

Q. In which Mr. Fidler thanks you for your letter of the 30th enclosing a corrected assignment of the Larson application.

Now, near the bottom of that page, Mr. Fidler says:

"As to the testimony and Thomasma's statement now I am holding everything subject to your call."

Did you understand what that meant when you received the letter?

A. Yes, I did.

Q. What?

A. I wanted to be sure that you and Mr. Fidler had knowledge of the fact that Mr. Thomasma had made this affidavit and what he had said in it and of his relationship, so I had been advised, I mean in the affidavit, with Automotive and Precision because I wanted to fasten on you knowledge that would hold you to the release to our customers, and I don't claim credit for being cautious 1109 about that. It was suggested to me by Edward Haight.

Q. Why was it that you wished this material to be preserved by Mr. Fidler, particularly the Thomasma affidavit?

A. Because you had given us a release in this contract that would prevent you from bringing any action for breach of confidence because of the relationship of Thomasma to Precision and Automotive and I wanted to be sure I could always fasten that knowledge onto you and so I had asked Mr. Fidler to hold that testimony and that affidavit.

Q. You mention Mr. Ed Haight. Did you discuss that proposition with him?

A. I did. I discussed with him the A. O. Smith case and the Foley case which we had in our office and were familiar with.

Q. In connection with the Thomasma affidavit, you discussed those cases with Mr. Haight?

A. Yes and his advice to me was well taken and I followed it.

Q. Now, will you please refer to the exhibits toward the end of this volume I handed you, the exhibits being 43 to 49, and comprising correspondence and a statement of wrenches.

Will you just look at those exhibits I have referred to?

A. Well, the statement of wrenches is the one that was given to you belatedly. It isn't marked with an exhibit number, Mr. Landsey. I am referring to this (indicating).

Q. No—that is attached to one of the exhibits, Mr. Hobbs.

A. One we gave to you belatedly in connection with the contract of settlement to indicate the number of wrenches that were on order.

Q. That was one of the clean-up matters, was it not?

A. That was one of the clean-up matters. The letter indicates it was mailed to you on the 4th of January.

Q. Now, did you hear Mr. Alberts testify that after our conference on December 24th that you said to him, and I quote his testimony:

"Come over to my office and I will give you a drink and you will feel better."

A. Well, I don't recall that and I think it was quite impossible for it to have happened because of the fact I went from your office directly home. I took the bus and FBI went home, which is an unusual thing for me to do, but it was right there on Michigan Avenue. If I had come back to my office, I would have had to wait for a late afternoon train on the New York Central and I wanted to get home.

My mother and father were there for Christmas. After I thought this thing over, I recalled I took some moving pictures of them when they were there and I checked up the dates on the film and the pictures were taken on that day and the day following. I was quite anxious to get home because when your parents are getting to eighty-six they are crowding their time.

Q. You didn't return to your office?

A. I did not return to my office.

Q. You heard Mr. Alberts' testimony about a bonfire, did you not?

A. As I recall, Mr. Hobbs, correct me if I am wrong—the first day Mr. Alberts testified you were not in the court room but you were the second day?

A. I was not here the first day but I was the second day.

Q. On the second day you heard me ask Mr. Alberts about his testimony of the bonfire and quoted his FBI testimony of the previous day, is that correct?

A. Correct.

1113 Q. Probably I had better read part of the record in that regard; I was questioning Mr. Alberts:

"Q. Now, you had quite a little bit to say about a bonfire?

"A. That is right.

"Q. And you discussed this bonfire with Mr. Hobbs?

"A. I wouldn't say I discussed. On the way home from that December 24th meeting, and that is all I would call it, a meeting for exchange of contracts in the outer office—we didn't even see the party. We just heard there was a party in progress, I mean the noise of that party. We were in the reception room at that time and I was—I brought my contract and Mr. Hobbs brought his—

"Q. I am asking about the bonfire. I am not wanting to know about the contracts. We have got those in. Let's get along.

"A. Well, when we went back, nothing much was said for awhile. I told Mr. Hobbs that I still didn't feel very good about the whole thing.

"Q. Let's talk about the bonfire.

"A. I am getting to that.—And that I felt, that 1114 that was the wrong thing to do and I said, 'By the way, I didn't see them hold the bonfire.' He said, 'Well, we will hear from them.' And then he said, 'Come on over to my office and I will give you a drink, you will feel better.'"

"Q. Well, now, did Mr. Hobbs say he had an understanding with us, Mr. Fidler and me, that there would be a bonfire?

"A. He didn't say it that way. He said there was a suggestion of a bonfire.

"Q. Now, who had made that suggestion of a bonfire?

"A. He said there was a suggestion of a bonfire. I am sure Mr. Hobbs did not suggest it, so it must have been Mr. Fidler. He had stated in the December 15th conference, if everything was settled, the evidence would be done away with.

"Q. So, Mr. Hobbs indicated it was Mr. Fidler that was going to destroy the evidence, is that right?

"A. No, he didn't mean Mr. Fidler was going to destroy the evidence. He indicated Mr. Fidler had suggested 1115 all the parties throw their records into the bonfire.

"Q. Oh, he had just suggested it?

"A. No. Who are you talking about, 'he'?

“Q. Mr. Fidler had just suggested there be a bonfire, is that right?

“A. He had just suggested there would be a bonfire.

“Q. Did you agree to have a bonfire?”—

Then, later I read the testimony Mr. Hobbs had made or given the day before; I am not going to take the time to read it all. What have you got to say about this bonfire?

A. There was no suggestion of a bonfire; and as I stated a few minutes ago, I wanted the testimony preserved, and I so told Mr. Fidler, and he agreed that it would be. Mr. Alberts was to have the stuff from the court reporter, his notebooks and transcript; and that was to be preserved.

Q. And that was the purpose of the agreement that those matters would be turned over by the reporter to Mr. Alberts, is that correct?

A. Yes, sir.

Q. And did you ever hear Mr. Fidler or me suggest a bonfire?

A. No.

Q. Did you ever hear Mr. Fidler or me, or anyone else in connection with this matter, during these negotiations or immediately following it, say that everything would be done away with?

A. No, I have no recollection of that, Mr. Lindsey; and if you had suggested it, you would have got the answer that I wanted it preserved.

Q. Was there ever any suggestion or implication on the part of any of us that there would be a bonfire, or evidence would be suppressed or destroyed?

A. No; if I were going to destroy evidence I wouldn't even tell my secretary, let alone the lawyer on the other side of a lawsuit.

Q. Did you ever destroy any of your files in connection with this controversy?

A. No, sir. No, I think my file is utterly intact.

Q. Were those files turned over to Defendants' present counsel?

A. Yes; I had a letter from my former client saying Mr. Ooms was going to represent him in the matter; and I had the file, and got it out and gave it to him.

1117 Q. I show you a letter from Carlsen addressed to you, dated July 7, 1942, calling on you to turn over

all your papers to Mr. Ooms; did you follow those instructions?

A. I followed those instructions, with one minor exception: In our office we have two files on a lawsuit, one we call the bill file, and the other is the working file; and the bill file has in it those matters which relate to fees and disbursements. And when I handed the file over to Mr. Ooms, the working file, there wasn't in it the letter of December 4th which I discovered only a few days ago had got into our bill file; and the only reason I can assign for it being misfiled is because it makes reference to the fact that the letter encloses a statement. And as soon as I found that letter I sent it up to Mr. Ooms. He is in the same building.

Q. And you turned the rest of the files over to Mr. Ooms in July of 1942, is that correct?

A. That is right.—Oh, there is one other thing, Mr. Lindsey, I did not give to him, because I didn't know the significance of it then, a longhand memorandum that had a lot of figures on it. And as I examined that thing the other day and found it was dated,—it has on it a list of numbers of wrenches on order, and sizes and prices; 1118 that was a yellow memorandum in my own handwriting, and that was not included in the file.

Q. Now, Mr. Hobbs, you have known for some years that an Interference may be settled by concession of priority signed by the inventor and approved by the assignee; and that the opposing party can do nothing to stop that; isn't that correct?

A. Why, that has been my understanding for several years.

Q. Did you ever offer, on behalf of Larson or Precision, to either Mr. Fidler or me or to Automotive, a simple concession of priority, without any conditions attached?

A. No; I said before, I didn't want to do that; I was afraid to do that. My client might have been out of business before Christmas.

Q. You would not have been satisfied with that kind of arrangement, would you,—as you have already testified?

A. No, I would not.

Q. Now, do you know whether Mr. Alberts during these negotiations was willing to have Snap-On reassign the Larson application to Larson in order to permit him to

sign a valid concession of priority, as shown by any correspondence in this file?

1119 Mr. Freeman: We object to that question, in so far as he is asking as to what Mr. Alberts was willing to do. He should ask him as to what Mr. Alberts told him or said. As the question is framed, we object to it.

Mr. Lindsey: Well, I will withdraw the question.—

Q. You heard Mr. Alberts' testimony about how willing he was, and anxious, to grant a concession of priority, didn't you?

The Witness: A. Well, I heard some discussion of that on cross-examination; I didn't hear any of the direct examination of Mr. Alberts, except a very few questions at the end.

Q. Well, you heard his testimony to the effect that that is what he suggested to you, and all along he was anxious to do it?

A. Yes, that is right.

Q. Well, now, what is your recollection as to his position on that, as stated to you by him or as shown in any correspondence?

A. Well, my recollections of it are this: That he mentioned in the first conference with me that his client was willing to concede priority; and the next step, in my memory, is the letter that Mr. Alberts wrote to me that 1120 the Snap-On Company was willing to reassign the application to Larson, to do with what he saw fit, or something of that sort; I don't remember discussions with Mr. Alberts, between the two of us, as to concession of priority alone.

Q. Well, now, I will read from Mr. Albert's letter to Mr. Fidler of December 17th, Defendants' Exhibit 73; you have already testified you had received a copy of that letter. In this letter Mr. Alberts states, "Without the concessions herein made by Snap-On Tools Corporation Larson and his nominee could not effect a settlement with the Automotive Maintenance Machinery Company, and this proposal has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of this controversy." And then I want to read from Exhibit 32, which is a letter from Mr. Alberts to you of December 18, 1940, in which Mr. Alberts states, "Further, I wish to advise that my client, Snap-On Tools

Corporation, shall be ready and willing to reassign Larson's Patent Application Serial No. 232723 to Larson just as soon as Mr. Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to it by virtue of Larson's or his nominee's inability to comply with the terms of the agreement of September 28, 1940." I further read from your letter to Mr. Alberts, Exhibit 34, the letter being dated December 19th, in which you say, "In accordance with your letter,— That is Mr. Alberts' letter, which I just referred to—" We will advise Mr. Larson that it is your client's desire to reassign the Larson Application Serial No. 232723, which we understand is the application in Interference, but that this desire is conditioned upon Mr. Larson's furnishing tangible security to indemnify Snap-On for any damages occasioned by the inability to comply with the terms of the contract of September 28, 1940."

Now, do those passages refresh your recollection as to what Mr. Alberts had to say on this matter of concession of priority?

A. Well, it refreshes my recollection as to the communications we had about assignment of the patent. And to that extent would indicate that there was not discussion between me and Mr. Alberts of a mere concession.

Q. And throughout these negotiations, was Mr. Alberts negotiating and maintaining that certain conditions should be attached on behalf of Snap-On?

A. Well, that one you last read is an example, 1122 where he wanted tangible security that we would fulfill our commitments to Snap-On. It is impossible of fulfillment.

Q. And you so stated, did you not, to Mr. Alberts?

A. I stated in that letter of December 19th, from which you just read, Exhibit 34.

Q. Will you read the passage that you refer to?

A. "Under the circumstances, the condition imposed seems to us unreasonable. Further, we know of no security available."

Q. Now, Mr. Alberts testified that he had a telephone conference with you on December 11th, and that he then prepared his memorandum bearing that date, the memorandum being Defendants' Exhibit No. 72; and I will ask

you to look at the first item and read it; read the first paragraph in the first item, if you will, Mr. Hobbs.

A. Aloud, or to myself?

Q. You better read it out loud, so the Court can get it.

A. Mr. Hobbs called and advised that their negotiations with AMMCO through Fidler have resulted in nothing other than the following arbitrary demands: One, Wacker wants Snap-On to pay the difference between AMMCO's former selling price and Snap-On's present selling price on an amount equivalent to about three 1123 dollars on every wrench that has been sold to date.

Q. What is your recollection as to our having made such a demand?

A. Well, I do not remember any such thing as that, Mr. Lindsey. If any such thing were made, Mr. Alberts is right in calling it arbitrary. It is possible that your demand—I am not figuring this out mathematically, but it is possible that your demand for a ten per cent royalty might have come somewhere near that mathematically, where we were offering only three per cent; but I do not recall any such terms ever submitted to me.

Q. Now, in the Precision and Larson answer in which the charge of perjury and compounding of perjury is alleged for the first time, the answer was filed on February 8, 1943, and Mr. Ooms was the attorney for Larson and Precision. Prior to that date; that is, February 8, 1943, had Mr. Ooms approached you and asked you as to your recollection of the facts in this case, before making those charges?

Mr. Freeman: That is objected to, as to what Mr. Ooms as counsel for Precision talked to Mr. Hobbs—

The Court: How is that material?

Mr. Lindsey: I want to show, may your Honor 1124 please, that this suit was recklessly brought by Mr.

Ooms, without the slightest justification. Mr. Hobbs was representing Mr. Larson and Precision at the time. Before bringing these charges against reputable attorneys—

The Court: Mr. Hobbs was representing whom?

Mr. Lindsey: He was representing Larson and Precision.

The Court: I thought he disclaimed the fact he was representing him. I thought he insisted that all these notices should be served on Alberts.

Mr. Lindsey: No, if your Honor please, in the negotiations there is no question that Mr. Hobbs was representing Precision and Larson; as far as the Interference was concerned in the Patent Office, Mr. Alberts was the formal attorney of record.

The Court: In other words, he was just representing him so far as this settlement was concerned.

Mr. Lindsey: That is correct. I think it is proper to show this suit was recklessly brought.

The Court: He may answer the question.

The Witness: I have forgotten the question.

Mr. Lindsey: Read the question, please.

(Question read by the reporter.)

1125 - The Witness: A. Mr. Ooms rode home with me one night, in my car; it is more accurate to say I drove him home, to his home; and he told me that he had become interested in this case. It was about the time that I turned the file over to him. He asked my recollection of it; I told him I had not looked at my file from the date it was closed; and that as far as I had been concerned in the lawsuit, I was not interested in whether or not there had been perjury, because it was immaterial to my commission and the obligation I had undertaken.

Q. Did Mr. Ooms ask you if we had made any threats, or agreed to have a bonfire; or did he ask you about this letter of Mr. Fidler that refers to cleanup matters, and about holding the testimony and the Thomasina affidavit subject to your call?

A. No, he did not.

Q. Did Mr. Alberts at any time ask you about those matters before making these charges in the Snap-On suit?

A. Well, I answered your last question on the basis of the date in the file when the answer was filed.

Q. Well, I think Mr. Alberts made those charges about the same date, definitely or a little before that.

A. Mr. Alberts did not talk with me about the matter at all until, oh, a week or ten days ago.

Q. Now, did you hear Mr. Alberts talk about how unfair these contracts were?

A. No, I do not recall that I did.

Q. Did you ever advise your clients, Snap-On and Precision, that these contracts in issue here were fair, particularly the Larson and Precision contract?

A. Confining my answer to that, because it had nothing to do with Snap-On?

Q. Yes.

A. Yes, I told my clients I thought they were fair and reasonable, and advised them to sign it, both in writing and orally.

Q. Did that particular contract afford the objectives and the purpose which you were seeking from the outset, as stated in your early letter to Mr. Fidler?

A. I think so; yes.

Q. Now, did you know at the time these contracts were entered into that Precision and Larson had another wrench which they contemplated manufacturing?

Mr. Freeman: He has already answered that once.

The Court: I thought he had. I don't know of any necessity for going over it again.

1127 Mr. Lindsey: Q. Now, you know, do you not, that the defendants; that is, Larson and Precision, and also Snap-On, have pleaded that the contracts in issue were unfair because Automotive or its agents or attorneys coerced the defendants in executing the contracts by threats of prosecution for perjury, and that there was an understanding and an agreement to suppress the evidence; you know those general allegations, do you not?

A. I know those general allegations not from reading the pleadings but from reading the statements of counsel in court at the time that Mr. Larson's discovery deposition was taken. They are set out generally.

Q. Well, now, what have you to say as to any threats, or any agreement, any coercion implied or expressed, by either Mr. Wacker, Automotive, Mr. Fidler, or me, or any one else connected with Automotive exerted by way of duress, or made by way of threats of prosecution or otherwise, to you or to Larson or to Carlson, or Precision, or any one connected with Precision?

Mr. Freeman: That is objected to, as leading.

Mr. Lindsey: I am asking what threats were made; it is not leading at all.

Mr. Freeman: Ask him what threats were made, 1128 by whom and to whom.

The Court: The objection is overruled. Let him answer the question shortly. Let us bring this to an end, if we can.

The Witness: A. There were no threats made to me, Mr. Lindsey, and no threats made to any one in my pres-

ence. But I will say that is either directly or by inference. And I think you found out when you tried to hurry me into the settlement that it would not have done any good to try to threaten me.

Mr. Lindsey: Q. And did you convey any threats to Larson or Carlsen, or Precision, or to Alberts or Snap-On?

A. No, I did not; no threats of mine or any one else.

Q. One of the conditions of settlement which you fixed was that Thomasma's stock would be returned; that is, his Precision stock; isn't that correct?

A. That is right.

Q. Now, there were many statements made by Mr. Alberts and Mr. Carlsen and Mr. Larson about threats; I am not going to read all of them. There are some statements here about they having revealed perjury to you. I am just going to take an example or two from page 91 of the

transcript: Larson testified that the first conference 1129 he had with you as follows: "We did not relate the entire testimony; but we told him that there had been some false testimony; that we wanted an attorney that would try to settle it, and as peacefully as possible. We didn't want to be turned over to the District Attorney for it." Did he tell you there was any false testimony, or that he did not want to turn over to the District Attorney?

A. He didn't say anything about District Attorney, or turning over to the District Attorney. He did tell me about the drawings that he had worked on and that Thomasma had worked on.

Q. Did you tell Larson and Carlsen that they better sign the contract or they would go to jail?

A. No, I did not. If a client does not accept my advice, he gets another lawyer.

Q. And did you tell Carlsen and Larson that the evidence would be destroyed as soon as the settlement was made?

A. No, I have previously tried to tell you that I wanted that evidence preserved.

Q. Then, to shorten this, any testimony on the part of Mr. Alberts, Mr. Larson, or Mr. Carlsen as to any threats of prosecution, any statements as to perjury, bon-1130 fire, — you deny; is that correct.

A. I do.

Mr. Lindsey: Your witness.

Cross-Examination by Mr. Freeman.

Q. Mr. Hobbs, how long were you at Mr. Fidler's home when Mr. Haight went with you there at your first conference?

A. Oh, I would say from an hour to two hours. I left after lunch, and I was home for dinner that night, and went up to North Evanston and back in the meantime.

Q. And do I understand that when Mr. Larson and Mr. Carlsen first came in to you, that is, on November 29th, that you were not acquainted with the circumstances of this case with respect to the Thomasma—with respect to Thomasma having made a drawing which Mr. Larson testified in the Interference a high school boy made?

A. This is the first time I have ever heard of a high school boy. I have been told by Mr. Alberts over the telephone that Mr. Thomasma stated that he had made 1131 drawings that were being put in evidence to prove Larson's date.

Q. And when did you first learn that Larson had committed perjury in the Interference?

A. I don't know to this day that Larson committed perjury in that Interference.

Q. You knew that there was something wrong in the Interference, when Larson and Carlsen came to your office with respect to settlement, did you not?

A. I knew that they were willing to settle the suit and concede priority.

Q. And you knew and had an understanding of the circumstances with respect to that situation at that time, on November 29th, did you not?

A. That knowledge and understanding that I got from the telephone conference with Mr. Alberts.

Q. And when you wrote to Mr. Fidler on November 29th,—and I am asking whether you have your file copy, I notice the letter was not included with the group used by Mr. Lindsey—you wrote Mr. Fidler on November 29th as follows: "We have been engaged by the Precision Instrument Manufacturing Company of Des Plaines to represent it and its inventors' interests in what we understand 1132 is an Interference in the Patent Office between the parties Zimmerman and Larson. We have some understanding of the circumstances and situation which has developed. Would like to confer with you about the mat-

ter at your early convenience—about Monday, if possible. Will you please phone me upon receipt of this letter, so that we can arrange a conference.”

Do you recall such a letter to Mr. Fidler?

A. Yes; yes.

Q. I would like to now ask you just what was the circumstances and your understanding of the situation with respect to Larson at the time you wrote the letter on November 29, 1940.

A. What Mr. Alberts and Mr. Larson and Mr. Carlson had told me on that day.

Q. And what did they tell you on that day?

A. Mr. Alberts told me that he feared that some of the drawings that had been—a drawing or drawings, I don't remember which he said—were falsified as to originality and date. And I am not trying to say that Mr. Alberts used the words originality and date; I am giving a conclusion that we drew. That he thought it was a case that should be settled, and he was sending the clients 1133 over, if I were willing to take on the matter to settle it.

Q. And that did Mr. Larson tell you at that time, when he came over to see you on November 29th?

A. He said that it had been recommended by Mr. Alberts that I might be able to settle the Interference, and would I take that job; and I said that I would. And I did not inquire into the reason why Mr. Alberts was willing to concede priority, or why Mr. Larson was. As I said on direct, by inquiries were as to their business and what they had to protect.

Q. You know, as a patent lawyer, that if Larson's testimony was true he was entitled to prevail in the Interference, and there was no need for a settlement of any kind; you know that, do you not?

A. Certainly.

Q. And with that information, are you now telling us that you didn't know that there was something wrong with respect to Mr. Larson's position in the Interference case?

A. I am not trying to say that, Mr. Freeman; what I am trying to say is that Mr. Alberts, Mr. Larson 1134 were prepared and wanted to settle that Interference, and that that was my job.

Q. And your job, as I understood from your direct

testimony, is to see that Mr. Larson's interests were protected?

A. As best I could do it.

Q. And you were not interested in reading the Larson testimony?

A. No, sir; I was not; I have not read it.

Q. And you were not interested in reading the Thomasma affidavit?

A. I was not.

Q. When did you get the information with respect to the Thomasma affidavit that brought about your request that the Thomasma affidavit be preserved so that you could tie up Mr. Lindsey and Mr. Fidler; or maybe I should say AMMCO to the Thomasma affidavit in connection with this settlement?—You know what letter I am calling to your attention, the one where Mr. Fidler wrote you as to the settlement, wherein he stated with respect to the testimony and the Thomasma affidavit, "I am holding it subject to your call?"

A. Mr. Alberts told me in his telephone conversation on the 29th that Thomasma had been or was an employee of Automotive; and I learned either from Mr. Alberts or Mr. Larson, or Mr. Larson came in, that Thomasma was a stockholder in Precision; and he told me that in connection with getting his stock back, and why he wanted it back. That is what brought to my mind the question of confidential relationships.

Q. And although you have never seen the Thomasma affidavit, you were willing to protect your client's interests by merely tying up the Thomasma affidavit with AMMCO or its counsel?

Mr. Lindsey: Read that question.

The Witness: I don't understand your question, Mr. Freeman.

(Question read by the reporter.)

Mr. Freeman: Q. I am referring to your direct testimony, wherein you testified that you wanted to connect up Thomasma's statement matter with either counsel for plaintiff or plaintiff itself.

A. Well, I don't think I said that; I wanted to be sure that the knowledge that these gentlemen who were giving me the relief had was preserved, so that that knowledge could always be fastened on to them, that they knew what

they were releasing, that they had knowledge of the 1136 facts. I obviously did not discuss with them what I had in mind, or suggest to them that I wanted a release because they might sue for breach of confidential relationship.

Q. Well, you asked for a release of the civil damages, did you not?

A. Yes, sir.

Q. And did you get it?

A. Yes; I got a good, broad release.

Q. Don't you think that type of release would likewise have covered the Thomasma statement matters?

Mr. Smith: If your Honor please, the framing of these questions is entirely wrong. He has said over and over again he was not trying to tie into the Thomasma statement—there has been no testimony that he was trying to tie into the—

The Court: Let him answer the question.

The Witness: Read it, Mr. Reporter.

(Question read by the reporter.)

The Witness: A. Well, if I understand your question, the release was intended to cover the situation that might develop if we were sued for breach of confidential relationship; and I wanted that information preserved as 1137 to what I had been informed Thomasma said. That is what I mean by tying in the Thomasma affidavit.

Q. And you were not interested in reading or becoming acquainted with the Thomasma statement matter, other than what Mr. Alberts told you, or Mr. Larson told you?

A. That is right.

Q. Now, what was to be done with respect to the testimony on December 31, 1940; why was that to be held, and how does that tie up?

A. December 31, 1940—

Q. So we are both clear, Mr. Hobbs.—I am not trying to ask any trick questions. This is a hard job, for one counsel to examine another counsel; but I am asking for an explanation of the letter of December 31, particularly that part which Mr. Lindsey read to you, wherein Mr. Fidler said, as to the testimony and Thomasma statement matters, "I am holding everything subject to your call."

A. Well, I will try to state it again, Mr. Freeman; it is the same thing we have been talking about: That I wanted that preserved, so that the knowledge could always

be fastened on to Mr. Fidler and Mr. Lindsey, that they knew about the relationship of Thomasma to Automotive and Precision; so that they could not say we released something without knowledge of the facts.

Q. And do you likewise tie up the testimony now, along with the Thomasma statement matter; I mean, are you using both of those things as the tie-up with Messrs. Lindsey and Fidler?

A. Yes.

Q. The testimony and the Thomasma statement?

Mr. Lindsey: He has answered the question, may your Honor please.

The Court: I didn't hear you, Mr. Lindsey.

Mr. Lindsey: I say, he has answered the question. Mr. Freeman is just repeating questions here.

Mr. Freeman: Q. Now, going back to Mr. Fidler's home, the meeting that you had there, when Mr. Haight was present,—please tell us what took place.

The Witness: A. Mr. Haight and I got to Mr. Fidler's house in a cab; and the door was opened to us, not by Mr. Fidler. We were shown into Mr. Fidler's den. He was lying on his back on a daybed. I sat opposite the head of the bed, and Mr. Edward Haight sat opposite the foot of the bed; and we talked obviously about his health, and how he felt; exchanged the usual courtesies.

1139 And I told him why we had come out, to discuss the settlement of this matter. He said he was glad to talk about it. And then he started to talk about the testimony and the Thomasma affidavit, and I stopped him. I told him in that I was not interested; that on the question of settlement, I considered that immaterial. I told him that I wanted to keep the client in business; that they had wrenches on order,—I meant to fulfill orders; and they had material ordered for the building. They had customers who were using the wrenches, that had to be protected; that we were willing to concede the priority; that we wanted a release broad enough to cover the use by the customers, and that we wanted a license.

And I cannot now, Mr. Freeman, recall whether I limited the license to fulfilling the orders, or whether I wanted a license under the entire life of the Zimmerman patents; I don't remember that.

Q. I was just coming to that, because I understood you to say that your letter of December 6th to Mr. Fidler, and

Mr. Fidler's letter to you of December 6th were practically the same with respect to what you proposed and what Mr. Wackett proposed; and I would like—

Mr. Lindsey: I object to the question; because the 1140 witness never said that, Mr. Freeman.

1141 Q. What was your purpose of seeing Mr. Fidler
1142 on December 2, 1940?

A. To attempt to settle the Interference.

Q. And the background with respect to the position that your client was in was given to you by Mr. Alberts over the telephone, is that correct?

A. That is correct, and supplemented by what Mr. Carl-
sen and Mr. Larson told me when they came in following the conversation with Mr. Alberts.

Q. And Mr. Alberts had told you that he was represent-
ing an adverse party, a possible adverse party?

A. That is right.

Q. So that we know exactly what information you ob-
tained from your client, will you now tell us what informa-
tion you received from Larson and Carlsen that gave you
the necessary background or information in order to prop-
erly advise your client as to their rights; and I am re-
ferring to your clients, because you were representing both
Kenneth R. Larson as an individual and Precision In-
strument Company.

A. That is right; both of those two. I repeat that I
inquired of them of their business, what they were manu-
facturing, learned from them that they had sold wrenches,
that they had others on order, that they had orders
1143 for material with which they expected to make fur-
ther wrenches; that one of the customers of Snap-On,
who I understood from my conversation with them was
Precision's sole outlet, was the United States Government
or some of its agencies; and that Mr. Thomasma held one-
third of the stock of Precision.

Q. That is, you had learned from Messrs. Larson and
Carlsen that the torque wrenches made by Precision were
sold in turn to Snap-On, and by Snap-On to the United
States Government?

A. Yes; but not that all of them were sold to the United
States Government. And by United States Government, I
mean agencies of the Government.

Q. Yes, the Air Corps and the Army and the Navy.

A. Yes, that is what I mean.

Q. And of course, you know that there isn't any liability on any sales made patentwise prior to the issue of the patent, do you not?

A. Will you repeat that?

Mr. Freeman: Read it, please.

(Question read by the reporter.)

The Witness: A. Well, if by patentwise you mean there is no liability for infringement prior to the issuance 1144 of a patent, I know that; I agree to that.

Q. Then my statement was correct?

A. Yes.

Q. And no patent had issued to AMMCO on any of the applications involved in the Interference at that time?

A. That is right.

Q. And you know now that no patent issued to AMMCO until after the 6,000 wrenches had been fully disposed of?

A. I don't know that, Mr. Freeman; I don't know when the patents issued, and I don't know when the 6,000 wrenches were disposed of.

Q. You will agree with me that there would be no patent infringement for which Precision was liable if the sale of the 6,000 wrenches had been completed prior to the issue of any of the Zimmerman patents?

A. I think that is right.

Q. And you know further that even after the termination of an Interference, the applicant who loses the Interference is still in position to test the validity in a District Court of the United States.

A. That is true, undoubtedly.

Q. And that even though the applicant in an Interference loses the Interference, he is still in position 1145 to question the scope of the claims with respect to infringement?

A. That is right.

Q. And you were interested in seeing that your client stayed in business; have I stated that correctly, remained in business?

A. Yes.

Q. And you knew that when you approved the agreement, that after your client had made the 6,000 wrenches, your client was through?

A. No, I didn't know that; I don't mean to quibble about 6,000; I take it, we are not arguing about whether it was 6,000 or 6,500.

Q. No, I am not questioning that, Mr. Hobbs.

A. Yes, I so assumed, Mr. Freeman. No, they told me about the new wrench that they had. And when I say I was interested in seeing them continue in Business, I mean I wanted them to still sell without interference the wrenches that they had on order, and fulfill their orders and be protected in them, and their customers. And that by that time that they would possibly have this new wrench in production. So that if that was the tiding over a period, they would be in position to go ahead and keep on.

Q. Were you interested in whether or not your 1146 client would make the new wrench?

A. To some extent, I was.

Q. And did you examine the new wrench in the light of your agreement as to the validity of the claims of the Zimmerman patent, which claims were not even involved in the Interference?

A. No, I didn't see the new wrench, and I do not recall that Mr. Larson explained it to me in detail at all. He told me that it involved a different principle. I don't know whether Mr. Alberts knew about the new wrench, or knew about it in detail.

Q. I am asking you about what you knew.

A. Well, I didn't know except as I was informed by Mr. Larson; and I am sure I saw no drawings of it, nor the wrench itself.

Q. So that when you stated you were interested in keeping your client in business, you really meant in permitting your client to sell those wrenches for which it then had orders; is that correct?

A. Well, I certainly meant that.

Q. And you did not mean continue in business over and beyond the particular amount of wrenches which your client had already sold or on order, or had outstanding 1147 commitments for; is that correct?

A. Yes, I meant that, too.

Q. You meant that your client should continue over and above the number of wrenches which it then had outstanding commitments?

A. Yes, referring to that new wrench, if that did not infringe some outstanding patent, or some that might be issued, that was available to them also.

Q. You knew that you were stopping your client from ever testing the validity of not only the claims that were

involved in the Interference, but of any other claims which were then in the Zimmerman application and not involved in the Interference, or any claims which the attorneys for Zimmerman might thereafter write and inject in the Zimmerman applications, did you not?

A. Yes, I think that is right. I am not looking at the contract as I answer; I do not remember the wording of it as I sit here. I think the admissions of validity went to any claims that might be secured on the basis of the disclosures of those applications; which is perhaps saying in another way just what you said.

Q. You are not in disagreement with my statement?

A. No; no.

1148 Q. And you didn't know whether or not the new wrench that Larson was going to put on the market, or continue with, by which he could continue in business, which was one of your objectives, was met headon by claims then involved in the Interference, or claims which were in the Zimmerman applications which were not in the Interference, did you?

A. No, I didn't know that.

Q. Now, tell us who suggested that the Larson application, your client's application be assigned lock, stock and barrel to the plaintiff in this case?

A. That suggestion came either from Mr. Fidler or Mr. Lindsey.

Q. It was not your suggestion?

A. It was not my suggestion, no.

Q. And the assignment of the application gave to AMMCO more than it would have got by a mere concession of priority, is that correct?

A. Well, I don't want to answer that question yes or no, because I don't know.

Q. Well, you know now that there has issued a patent upon the Larson Application?

A. I have been so informed.

1149 Q. So you know now that AMMCO got more by taking over the Larson Application than he would have gotten if it merely had received a concession of priority?

A. No, I don't know that, Mr. Freeman; because if the fact that they have got a concession of priority, and had issued the Zimmerman patent as promptly as they could, I feared that they would stop the fulfillment of the orders

of the wrenches that were on hand. I cannot sit and use hindsight and compare the thing that did happen with something that did not happen, and say which is the better.

Q. I was merely asking you with respect to the Larson Application; you know, as a patent lawyer, that when a concession of priority is granted the one who gives the concession does not get the claims that were involved in the Interference; you know that, don't you?

A. Oh, yes.

Q. And you know that when Larson gave the concession of priority he gave to Zimmerman everything that was involved in the controversy then pending in the patents; you know that to be a fact, don't you?

A. I think you have not said in your question what
1150 you meant to say.

Q. You understand what I want to say, answer it.

A. I think you just mis-spoke a word. Read it back.

(Question read by the reporter.)

The Witness: A. No, I don't know that.

Q. Well, you know that when you give a concession of all the claims involved in the Interference, you are giving up everything in respect to the Interference, are you not?

A. Yes, I know that; but that was not your previous question.

The Court: The difference involved there is whether you are giving up what is involved in the Interference or the Patent Application.

The Witness: Yes, that is what I am talking about.

The Court: I don't know much about this, but I can see the point. There may be other claims, but they cannot be involved in the Interference.

Mr. Freeman: That is what I was trying to bring out.

The Court: He brought it out.

Mr. Freeman: Q. So that the record is clear, when you give a concession of priority in an Interference case, of all the claims involved in the Interference, you then
1151 give to the other side everything of the controversy; is that correct?

A. You give to the other side everything that is in the count in the Interference.

Q. In issue.

A. In issue in the Interference.

Q. And there might be claims still left in the appli-

cation that was not involved in the Interference; is that correct?

A. That is correct.

Mr. Lindsey: If your Honor please, I am going to object to this; it has no bearing, this lecture on patent law—

Mr. Freeman: It is not so much a lecture on patent law as it is getting right down to the heart of this thing.

The Court: There is so much that I did not enjoy that this interests me.

Mr. Freeman: Q. Have you answered my question? Read it, please.

(Question read by the reporter.)

The Witness: A. I think I did.

Mr. Freeman: Q. So that when Larson assigned his application he gave something to AMMCO over and above that which was in issue in the Interference; is that correct?

1152 A. That is right.

Q. And who suggested that as to those claims which were then in the Larson Application, or those which might be written in the Larson Application, be recognized as to validity and scope?

A. Well, it certainly came from representatives of Automotive; I cannot tell what I don't remember whether it was Mr. Fidler or Mr. Lindsey; and they were the only two persons I was dealing with. The matter of the assignment of the application came up after my objection to the ten per cent royalty.

Q. Well, did you determine whether or not any of those additional claims in the Larson Application might be readable upon what Larson proposed—when I say Larson I mean Precision likewise—

A. Yes.

Q. —proposed to do after it had cleaned up its commitments of some 6,000 wrenches, in order to stay in business, which was one of your objectives?

A. I lost the question, Mr. Freeman; will you read it back?

(Question read by the reporter.)

The Witness: A. No, I did not determine that.

1153 Q. And did you advise either Mr. Larson or Mr. Carlsen or Precision that when they assigned the application they might be faced with the claims which were then being transferred to AMMCO as against any new wrench which Larson or Precision might thereafter make?

A. I think I did, Mr. Freeman; I think they understood that.

Q. You gave no opinion?

A. I gave no opinion as to whether they would or not. — Well, my language is not very good; as to whether the new wrenches might infringe claims that might be secured, I gave no opinion as to that.

Q. Yesterday Mr. Lindsey asked you, and I am now reading from page 707 of the record:

“Did that particular contract afford the objectives and the purposes which you were seeking from the outset, as stated in your early letter to Mr. Fidler?”

And you answered, “I think so, yes.”

Do you want to at this time make any qualification in either your answer, or any further explanation?

A. No.

Q. Are you satisfied today that you did obtain, in the agreement that was executed by your client as of 1154 December 29, 1940, the objectives which you were seeking from the outset, as stated in your early letter to Mr. Fidler; and that last part of my question I have read from the question asked you by Mr. Lindsey?

A. I am; I think I did the best I could.

Q. That is not answering my question; there isn't any disagreement as to what you did, Mr. Hobbs; I am merely asking you now whether or not in the agreement of December 20, 1940, you obtained the objectives which you were seeking from the outset, and as stated in your early letter to Mr. Fidler?

A. Yes.

Q. Do you have the letter of December 6, 1940, which you wrote to Mr. Fidler?

A. Yes, I have it here, Mr. Freeman.

Q. And the first proposal was that Larson would concede priority to Zimmerman; that was done, was it not?

A. That was done.

Q. And is there anything in your letter of December 6th about giving to AMMCO a complete or total assignments of the Larson Application?

A. No.

Q. And is there anything in the letter that you 1155 wrote to Mr. Fidler on December 6th, that Larson and Precision would recognize the validity of any claims over and above what estoppel might arise by way

of a concession of priority in the claims involved in the Interference?

A. No, except as the license that is referred to in the third item of that letter will involve a recognition of the patent.

Q. You gave more than merely recognition of the kind that a licensee gives to the licensor?

A. I think that is right, Mr. Freeman.

Q. And there isn't anything in your proposal or in your outline of December 6th to Mr. Fidler that in any way talks about the validity of claims not involved in the Interference?

A. That is right.

Q. That was something over and above?

A. If you want to put it that way; something over and above, I have no objection. I was trying to get a license of as broad a scope as I could.

Q. And you were trying to get a license for the future, were you not;—that was not too clear yesterday, and I now ask you to tell us whether or not the license that 1156 you asked for would have permitted Larson and Precision to continue in business on after its present commitments; and by present commitments I mean those which it then had on order.

A. The letter states that on orders received subsequent to the date of settlement Precision would pay three per cent on the sales price.

Q. And is there any limitation as to when the three per cent would discontinue, or when Precision or Larson would have to discontinue its license?

A. No, there is not.

Q. And as a matter of fact, you then intended, and the letter still means today, that you were asking for a license to continue in business for the life of the patent under which your client was going to be licensed; is that correct?

A. I think that is right.

Q. And you were not going to pay any royalties, according to your proposal, on those items for which Larson and Precision then had orders on hand; is that correct?

A. That is right; nor for those that had been previously sold.

Q. And you were going to get a release as to those 1156 that had been previously sold, so that there would be no comeback from AMMCO customers of Precision and Larson; is that correct?

A. That is right; that is what I meant by the item numbered 2 in the letter.

Q. Now, Item No. 2 you take up claims of civil damages; had any suggestion been made to you by Mr. Fidler in your conference of December 2, 1940, that there might be made a case for civil damages?

A. No; this suggestion is mine. I think that is referred to in a previous letter, the letter of December 4th.

Q. Not to Mr. Fidler; the letter of December 4th that was sent to your client.

A. The letter of December 4th to Precision Instrument.

Q. And what does it say with respect to civil damages, the letter that you have just referred to?

A. I didn't hear you, Mr. Freeman.

Mr. Freeman: Will you read the question?

(Question read by the reporter.)

The Witness: A. I will read the sentence to which reference was made: "We told him—" Interpolating that as Mr. Fidler—"that we were willing to concede the priority, that we wished an appropriate release of 1157 damages, and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments."

Q. So you told Mr. Fidler that you wanted a release for damages?

A. Yes.

Q. When you talked to him on December 2nd; and you obtained a release on December 20th, in the December 20th, 1940 agreement, a good, broad one, as you stated; that is correct, is it not?

A. That is the way I would characterize the release.

Q. Well, did you ever tell your clients that you were going to fasten on—and I used the word, the yesterday—the Larson testimony and the Thomasma affidavit with Messrs. Fidler and Lindsey, so that there would never be any question about their having knowledge of Thomasma's connection with AMMCO, and likewise with Precision.

A. I do not recall, Mr. Freeman, whether I did or not. I am quite certain I did not attempt to give them a lecture on law of confidential relationships.

Q. Mr. Alberts was in some fashion co-counsel at least; he was representing some one substantially in the same boat as your client; is that correct?

A. In some respects, in the same position.

Q. Even though there was adverse interests, and you were protecting your client and he was likewise protecting his client?

A. That is right.

Q. And still there was something?

A. There were common interests.

Q. Common interests that both you and Mr. Alberts were interested in, in behalf of your respective clients; is that right?

A. That is right.

Q. Did you ever tell Mr. Alberts that you were getting a particular kind of a release, and that you were using the Thomasma affidavit and the Larson testimony as a tie on with Messrs. Fidler and Lindsey?

A. I don't think I did. I don't think I got any particular kind of release. My proposal was to have the release as broad as I could get it, so that it would cover what I had in mind. I am a little bit confused about what you mean by tie on, or fasten on to Mr. Lindsey and Mr. Fidler the Thomasma affidavit. I mean that I wanted to have available information that if it became necessary I 1159 could prove that they had the knowledge. They already had it, but I wanted to be able to prove that they had it.

Q. And the information that you received with respect to the Thomasma affidavit came to you from Mr. Alberts; is that correct?

A. That is right.

Q. And you as counsel for Precision and Larson were willing to take Mr. Alberts' statement with respect to what was in that affidavit?

A. Yes, I was willing to take his statement as to what was in the affidavit; and if it was supplemented by what Mr. Larson told me that he had been informed as to what was in the affidavit. I think Mr. Freeman, that most of the information about relationship of Thomasma to the two companies came to me directly from Mr. Larson.

Q. You know now what I meant about the fastening of the Thomasma affidavit and the Larson testimony.

A. I think that was my language; I think I used it yesterday. I am not sure that you understood what I was trying to say by it.

Q. Now, why did you stop Mr. Fidler from telling you

about the case when you first met him and went out 1160 to his home with a view of a settlement?

A. It was immaterial to what I wanted to do. And then I think I also had a selfish reason, that I did not want to take the time to go into all of that material which I considered to be not pertinent or germane to a settlement; certainly, to have gone through all of that would have been extensive in time, which I would have expected Precision to pay for.

Q. They paid all your bills, did they not?

A. Oh, yes.

Q. Weren't you interested in getting all of the facts and background at the outset, so that you could properly advise your clients of their legal rights in this case?

A. Why, I think I was interested in getting all the information that I considered pertinent and material, when the client came in and said that he wanted to settle the Interference and have me to do the best job I could.

Q. And you started on the basis that your client wanted to settle, without finding out any reason why your client should settle?

A. I was retained to settle the Interference.

Q. Now, as a matter of fact, wouldn't you have to 1161 know what the facts were or the position of your client, so that you could properly advise your client as to what it should do under the circumstances?

A. No, I think not; I was not advising him as to whether to settle. I started out on the premise that I was to settle. That is what I was engaged to do.

Q. And you started out on the premise of settlement of the kind outlined in your letter of December 6, 1940; is that correct?

A. As nearly as I could achieve that; that is what I was trying to do.

Q. And would you say that you nearly achieved that?

A. I think I did.

Q. Do you think that the contract of December 20, 1940 is coextensive with your proposal of December 6, 1940 to Mr. Fidler?

A. No, I don't think it is coextensive, Mr. Freeman.

Q. In other words, you kind of backed away?

A. There was bargaining back and forth.

Q. And your client gave up certain rights from the posi-

tion that it took, as outlined in your letter of December 6, 1940; is that correct?

A. That is right.

1162 Q. And what did you use as the yardstick by which you measured how far your client could recede from the position that you outlined in your letter of December 6, 1940?

A. Conferences and discussions with the client. And—

Mr. Lindsey: Let him finish.

The Witness: No, I have finished.

Mr. Freeman: Mr. Hobbs is quite able to take care of himself, it is obvious.—

Q. And what did your client tell you then, between the dates, between the 6th of December, up to December 20, 1940, at these conferences where you began to recede from the position that you took on December 6, 1940?

A. Well, as each proposition was advanced, or a change in the terms that were suggested by any of the three parties involved, they were discussed with Mr. Larson; and I believe a time or two with Mr. Carlsen,—I am not sure of the latter; or by communications, by letters with them; and the things were agreed upon as the result of those discussions.

Q. Could you tell us what Mr. Larson and Mr. Carlsen, either of them, told you so that you could give them the advice with respect to how far they should go with respect to their concessions; I understood you to say yesterday 1163 day that if a client did not take your advice, the client looked for a new lawyer.

A. I don't think I can state further than I have; and I think the thing is pretty well summarized in the advice I gave the client and the conferences that you had in the letter of December 18th, which is in evidence, my letter to Precision of the 18th.

Q. That is the letter where you said that Precision was in a precarious position; I think that is the first sentence of the last paragraph on page 2 of that letter.

Mr. Lindsey: That is Exhibit 33, Mr. Hobbs.

The Witness: All right; I just found it. Yes, that is the letter.

Mr. Freeman: Q. And you told Precision that it was in a precarious position?

A. That is right.

Q. Now, what did you mean when you said that without

the settlement Precision is in a precarious position, between the upper millstone of AMMCO and the nether millstone of Snap-On, the outlook for the future is not sanguine.

A. On the morning I wrote that letter there had been delivered to me by messenger from Mr. Alberts' office a letter saying that tangible security had to be posted 1164 that Precision would fulfill its contracts with Snap-On. The other reference to AMMCO is the fact that if the Zimmerman patent issued there would be a suit, and the outstanding orders might not be fulfilled; or if they were fulfilled, there would be charges of patent infringement; and customers that had theretofore been sold would be subjected, or could be subjected, properly stated, to patent infringement suit for use.

Q. Had you already explained to your client prior to December 18th the position that it was in?

A. I haven't a recollection of it, Mr. Freeman, but I think I must have done it.

Q. Well, what did you intend your clients to gather from the statement of your letter of December 18th, that it was between the upper millstone and the nether millstone without a settlement?

A. Just what I have said in the letter, and what I have said to you now from the stand. I think I referred in this letter to the demand for security; I am not sure.

Q. Well, what did you want to convey to Messrs. Larson; that is, to Mr. Larson and to Precision Instrument Company, and I note your letter is addressed to both Precision and Kenneth Larson?

1165 A. What I have said, and what I wrote.

Q. That is, that your client without a settlement was in a precarious position?

A. That is right.

Q. And without a settlement your client was between the upper millstone of AMMCO and the nether millstone of Snap-On?

A. That is right.

Q. Now, what millstone did AMMCO have on your client at the time you wrote this letter?

A. They had the Zimmerman patent application, and the interference, and the possibility of the infringement suits that I have just mentioned.

Q. Isn't that all predicated upon the basis that Zimmer-

man would prevail in the Interference, and that Larson's testimony was not the truth?

A. It was predicated on the idea that Zimmerman would prevail in the Interference.—

Q. Where did you get that information, that Zimmerman would prevail in the Interference?

A. I got that from Mr. Alberts in the first telephone conversation.

1166 Q. And you took the information from Mr. Alberts as the basis for making the statement contained in your letter of December 18, 1940?

A. Yes.

1167 Q. Even though he was counsel for a possible adverse party?

A. The information that had come to me from Mr. Alberts was what he had obtained when he was counsel for both parties.

Q. But he told you from then on you were representing Larson and Precision, or, at least, that he was not representing Larson and Precision?

A. In the settlement. And the reason he wanted some other counsel was because, as he stated to me over the telephone, he thought there might be an adverse interest arise between Snap On and Precision because of the fact that Zimmerman would probably prevail in the interference.

Q. As a matter of fact, Mr. Hobbs, didn't you want to paint a picture by use of the upper and lower millstones to Mr. Larson and to Precision Instrument Company that they would understand they were in a tough spot?

A. Well, I think that the tough spot is, perhaps, a slang phrase, modern language, that shortens that maxim or adage I used in the letter.

Q. You wanted to paint a picture to them, did you not, so they would understand? You weren't talking to counsel or lawyers or highly educated individuals, you were
1168 talking to workmen, were you not?

A. Mr. Larson is a workman. I don't know how highly educated he is.

Q. You wanted him to get the picture that he was in a precarious position or tough spot?

A. I stated that in the letter, precarious position.

Q. The only statement you have made in respect to

AMMCO's upper millstone is the fact they might have the Zimmerman patent issued, is that correct?

A. I think that is the principal thing.

Q. And had they had the Zimmerman patent issued, they would have had a right to have their day in court?

A. That is right.

Q. And that right was given up with respect to the validity of the Zimmerman patent when the agreement of December 20th was signed, is that correct?

A. That is right, that was given up. Other things were obtained.

Q. Now, by the way, Mr. Lindsey asked you yesterday about the telephone call you had from Mr. Alberts on either November 28th or 29th and you referred to your worksheets.

Now, as a matter of fact, your worksheets do not 1169 show whether or not you called Mr. Alberts or he called you? Would you look at your worksheet and tell us now?

A. Surely, I will look at them. I don't need to to answer your question. I know they don't reveal that.

Q. So, your worksheets do not show that Mr. Alberts called you?

A. No, they do not. That is my recollection, that he called me, and I referred to the time sheet for the date.

Q. Now, you were not interested in the Interference that Larson was in, so I have been advised. That is correct, is it not?

A. Well, I am not sure, Mr. Freeman, that I completely understand your question. I was not interested in the merits of the Interference or the proofs that had been given.

Q. Turning to your letter of December 18th to Precision and Larson, I would like to have you tell us upon what you based the following statement and I now read from your letter, Page 2:

"We think you should give very serious consideration to whether you desire to spend any additional funds on the Interference."

A. You want to know what I meant by that?

1170 Q. Yes, in the light of what you said yesterday that you weren't advising them in connection with the Interference.

A. Well, I had reference in the letter to the state of

the Interference, the expense that would be involved in the continuation of the testimony and the briefs and arguments, whatever might ensue in the Interference if it weren't settled.

Q. And if Larson's testimony were true, Larson would be sitting in the driver's seat today; is that correct?

A. I don't know.

Q. He would have prevailed in the Interference?

A. I don't know.

Q. Are you telling us now that you recommended or said to Mr. Larson:

"We think you should give very serious consideration to whether you desire to spend any additional funds in the Interference," without knowing whether Larson could or could not prevail?

A. That is right, Mr. Freeman. Maybe I erred but that is what I meant.

Q. Regardless of whether Larson could or could not prevail?

1171 A. That is right. Now, I hope you have in mind, as you ask these questions, as I have in answering, about Mr. Alberts' statement to me that he feared there had been drawings that were not valid and that he was questioning their originality and the date.

Q. You didn't predicate that statement or advice to your client with respect to your client spending money in the Interference on any statements made to you by Mr. Alberts, no mention about Mr. Alberts having told you?

A. You mean no mention in this letter about it?

Q. Yes.

A. No, there isn't.

Q. And upon Mr. Alberts' statement to you made at the outset, you were willing to recommend to your client not to proceed in the Interference or spend additional funds, is that correct?

A. That was one of the factors, one of the measures I had in mind, certainly.

Q. Now, Mr. Hobbs, in that same letter I would like to have you tell me what you meant when you wrote to Precision and Larson by "damages arising out of the Interference and the incident circumstances"? Just tell as what were the incident circumstances.

1172 A. The thing I referred to there Mr. Freeman, was that dual relationship of Thomasma to the two companies.

Q. And nothing with respect to the making of a drawing, Larson's Exhibit 27, in the Interference?

A. No, I did not have that in mind. I don't see how that drawing could give rise to any cause of action or who made the drawing.

Q. And you know that if Larson had conceived the invention in 1934, regardless of what connections there may have been between Precision and AMMCO by way of Thomasma in 1936 or 1937 or 1938, Larson was still entitled to prevail and there would be no incident circumstances?

A. No, I didn't know that because I didn't know the date Mr. Larson claimed. I didn't know the date or precisely the date when he made—when it was, the origin of the relationship between him and Precision on the one hand and Thomasma on the other hand.

Q. You do agree with me that if the relationship between Precision and Thomasma and AMMCO was subsequent to Larson's conception in this case that there would be no incident circumstances?

A. I don't think I can agree to your statement quite as broadly as you make it. I don't mean to be technical but, if you will, use the word "invention" instead of "conception," so there will be a complete invention.

1173 Q. With that change in the question, you go ahead and answer it.

A. Yes.

Q. So, you didn't know at the time that you were talking about incident circumstances whether Larson had his invention earlier than Thomasma's connection with Precision?

A. No.

Q. And, I take it, that when you first wrote to Mr. Fidler on the 29th wherein you said: "We have some understanding of the circumstances and situation which has developed," that you now likewise interpret that to mean Thomasma's connection with AMMCO and Precision?

A. That and the thing that had been told to me by Mr. Alberts and Mr. Larson.

Q. Were you told at any time that Larson had falsified in his testimony?

A. No, I wasn't told that.

Q. Were you ever told that Larson's drawing which he used as Exhibit 27 in the Interference was not genuine?

A. I never was told that any drawing was not 1174 genuine. I don't know what Exhibit 27 in the Interference is.

Q. Were you told by anyone that Larson had used some drawings in the Interference and that he had misdated or placed dates earlier thereon, or, at least, not the true dates?

A. My recollection is—I am trying to state it as accurately as I can, Mr. Freeman—is that Mr. Alberts told me that he feared that the drawings were falsified and what I say as to originality and date, I am not trying to use the words Mr. Alberts used to me but the conclusions I drew from what he stated to me. Mr. Alberts didn't tell me as a conclusion of his that there were false drawings or that there was perjury.

Q. Did he not tell you that Mr. Larson had confessed his errors in his office?

A. No, he did not.

Q. (Continuing.)—prior to the date you talked to Mr. Larson and Carlsen?

A. No, he did not.

Q. And you never had that information all during the carrying on of these negotiations starting as of November 29th and terminating on or about December 31, 1940?

A. I didn't have that information and I made no 1175 investigation and I stopped Mr. Fidler when he tried to tell me what he knew of the testimony in the Thomasma affidavit.

Q. Mr. Hobbs, do you recall the meeting you had in my office on Wednesday afternoon about 2:30, April 21st—

A. I don't remember—

Q. (Continuing.)—of this year?

A. (Continuing.)—the day or hour, Mr. Freeman. I know I had a conference and at your request I came over to your office to see you and Mr. Alberts and Mr. Ooms.

Q. And do you recall I had put in a call earlier in the day and you were in the Court of Appeals with Mr. Haight?

A. No, I don't recall that but I was in the Court of Appeals on the 21st with Mr. Haight, the 21st of April.

Q. Do you recall my talking to you about Harrison F. Lyman, whom I think was the opposing attorney?

A. That is right.

Q. Do you recall you returned my call? That is, I had called you earlier in the day and you were gone and I left word for you to call me?

A. I think that is right.

Q. Do you recall talking to me on the telephone?

1176 A. Yes, sir.

Q. And do you recall coming over to my office?

A. Yes, sir.

Q. And do you recall Mr. Ooms and Mr. Alberts and myself in my office?

A. That is right.

Q. Do you recall my asking you with respect to the subject matter of the case herein before this court?

A. We talked about this case.

Q. Do you recall my asking you with respect to perjury?

A. Yes, we talked about perjury.

Q. And, so that the record is clear, do you recall I asked you whether there was any conversation with respect to a bonfire and you denied it then?

A. When you talked to me over the telephone, you said you wanted me to come over to your office to learn what I knew about a bonfire you had been told about.

Q. And you denied that, did you not, at that time?

A. I did.

Q. I just wanted the record straight as to what you and I talked about.

A. I don't think we will have any disagreement about that, Mr. Freeman.

1177 Q. Then do you recall my asking you with respect to perjury?

A. Yes. I wish you would be more specific about what you asked me. Surely, we talked about perjury and the charges of perjury.

Q. And do you recall what you said to me when I asked you as to whether or not you knew there was perjury in this case and whether the other parties, that is AMMCO and its attorneys, knew there was perjury?

A. I think what I told you is that it made no difference

to me as far as my commission in the case was concerned whether there was perjury or not; that it was immaterial to what I was trying to do.

Q. Do you recall stating to me when I asked you whether you knew there was perjury and whether AMMCO and its attorneys knew there was perjury, stating to me, and I now quote:

"Of course, we were all operating on the basis that there was perjury."

Do you recall that?

Mr. Lindsey: What are you quoting from, Mr. Freeman?

Mr. Freeman: From a memorandum I have.

The Witness: A. No, I don't recall that, Mr. 1178 Freeman. I think what I told you was that I was perfectly willing to assume that there was perjury or that there was not; that it made no difference to me.

Mr. Freeman: Q. And do you recall saying that, "We all operated on the basis that there was perjury"?

A. No, I don't recall that.

Q. Do you recall me sitting at your left and Mr. Alberts sitting in front of you and Mr. Ooms sitting on your right at the time I made that specific question or stated that specific question to you?

A. We were sitting roughly as you state.

Q. Do you recall my asking you now whether or not you knew there was perjury?

A. I think you did ask me that.

Q. And you now want your answer on the basis that you were operating on the basis that there might have been perjury or there wasn't perjury, is that correct?

Mr. Lindsey: I object to the question.

Mr. Freeman: Q. You tell us what you told me. That is what I want to get at.

The Court: Ask him then.

The Witness: I didn't hear you, Mr. Freeman.

Mr. Freeman: Q. Please tell me now—

1179 The Court: He said we lawyers get into trouble sometimes.

Mr. Freeman: I was speaking for myself only, your Honor.

The Court: I guess the others didn't hear.

He wants you to tell him what happened over at his office.

Mr. Freeman: That is right.

The Court: In connection with this charge of perjury.

The Witness: A. Well, the perjury or the conversation, as near as I can recall it, Mr. Freeman, was you asked me if I knew there was perjury and I told you I did not, that it was immaterial, I deemed it immaterial to what I was trying to do whether there was or was not perjury.

I don't recall I told you that we all assumed that there was perjury. I don't recall telling you that anybody told me that there was.

I recall that I was asked if there was an agreement or understanding for a bonfire and I denied it. I recall that I was asked if I had been threatened, I don't mean personally but my clients through me, by the attorneys 1180 on the other side and that I denied that.

Mr. Freeman: Q. Do you recall just how you denied that? Do you recall what you told me in that connection?

A. I think when we were talking about that I referred to the fact of my dispute with Mr. Lindsey over the telephone.

Q. And that both of the Harrys in this case, Harry Alberts and Harry Lindsey, were a couple of hot-heads?

A. That is right, Mr. Freeman. I used that language that I was trying to settle a case between two hot-headed Harrys.

The third thing I remember is: as I remember, Mr. Alberts wanted to concede priority only and I had objected to that because I had said there would still be perjury if we did that and I certainly have no recollection of ever having such discussion with Mr. Alberts because if perjury had been committed, you couldn't wipe it out by any settlement you might make.

Q. Now, you operated on the assumption your client was wrong throughout the negotiations?

A. I operated on the—oh, let me answer your question "yes" and qualify it.

I operated on the assumption my client couldn't 1181 prevail in the interference because he had come into my office and said he wanted to settle.

Q. Didn't you operate on the basis that your client was wrong?

A. I don't want to appear to quibble with you, Mr.

Freeman, but I want to be sure I know what you mean by "wrong."

Q. Well, you wrote to Mr. Fidler on December 6th:

"Rather, our philosophy is based on the assumption everybody is wrong and that the practical thing to do is to make a definite settlement," did you not?

A. That is right and I still subscribe to that.

Q. And that included the assumption your client was wrong?

A. And, equally, the assumption that the other side was wrong.

Q. And I now ask you to tell us upon what you based your assumption that your client was wrong?

A. On the statements to me by Mr. Alberts and my client and the willingness of the client to settle. That is as far as your question goes, isn't it?

1182 You didn't ask me about AMMCO.

Mr. Freeman: Thank you. That is all.

The Court: Any redirect examination?

Redirect Examination by Mr. Lindsey.

Q. Mr. Hobbs, at your conference with Mr. Fidler at his home on December 2d, the essence of your proposal or suggestions with respect to settling the matter was as expressed in your letter to Precision of December 4, 1940, Exhibit 63, was it not?

I will read from the letter which you addressed to Precision, attention Mr. Larson:

"We told him,"—

"him" meaning Mr. Fidler.

"—we were willing to concede priority; that we wished an appropriate release of damages and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments."

Now, is that the proposal or suggestion you made to Mr. Fidler on December 2d?

A. That is right.

1183 Q. Then on December 6th, Mr. Fidler wrote to you, his letter of that date, Plaintiff's Exhibit 29. In there he states to you that you had proposed, namely, a settlement by this:

"—namely by Larson conceding priority to Zimmerman.

and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled.

Now, that was the general suggestion also you had made to Mr. Fidler on December 2d, is it not?

A. I don't think I can answer your question yes or no, Mr. Lindsey. This letter of Mr. Fidler has the statement in it, "further agreement to discontinue the manufacture and sale of wrenches as soon as orders on hand had been fulfilled," and that is not recited in my letter of December 2d.

Q. You mean your letter of December 4th?

A. Letter of December 4th referring to the conference of December 2d.

Q. Except you state in your December 4th letter that we wish a license to protect our customers and to permit us to fulfill existing contracts and commitments.

There wasn't any suggestion there for a continued license in your letter of December 4th?

A. The probabilities are that was intended to mean the same thing.

Q. Now, you first proposed in your later letter of December 6th to Mr. Fidler a 3 per cent royalty and AMMCO then suggested a 10 per cent royalty, is that not correct?

A. That is right.

Q. And by virtue of the agreement in question, Precision obtained virtually a license to manufacture six thousand wrenches to fill its orders from Snap-On, isn't that correct?

A. That is correct and if there were other wrenches on order in excess of six thousand, they were included, too.

Q. What was the consideration for that license?

A. Three per cent on—

Q. I mean the license that was actually entered into, Mr. Hobbs.

H185 A. Yes. On wrenches in excess of six thousand, as referred to in the contract, there was to be ten per cent and, as I recall it, without looking at the contract, there was to be no other royalty on a percentage basis but we paid five hundred dollars and assigned the Larson application, and that was the bargaining point between your

demand for ten per cent on everything and our offer to pay three per cent or my suggestion to pay three per cent.

Mr. Lindsey: That is all.

(Witness excused.)

1186 Mr. Lindsey: Mr. Haight, please.

EDWARD A. HAIGHT, called as a witness herein by the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Lindsey.

Q. Please state your full name.

A. Edward A. Haight.

Q. How long have you been associated with Mr. George I. Haight in the firm of Haight, Goldstein and Hobbs in the practice of law, Mr. Haight?

A. It will be nine years this August.

Q. There has been testimony given in this case with respect to a conference which was held at Mr. Fidler's home on December 2, 1940. Were you present?

A. I was.

Q. Who else was present?

A. Mr. Fidler and Mr. Hobbs.

Q. Will you please state to the Court just what was said at that conference?

A. Well, first, for just a minute or two, we discussed Mr. Fidler's back, I believe it was. He was on a day 1187 bed in his den in his house, and we said something about his new home, it was relatively new and attractive, and then we talked about settling the Interference.

Mr. Fidler opened the conversation on that, as I recall it, after Mr. Hobbs had said that he knew generally the facts in connection with it. Mr. Fidler said that he could give him more details and he started to tell us about an affidavit he had, or a statement he had, that would indicate that a drawing or drawings introduced by our client in the Interference had been faked, and Mr. Hobbs told him that he didn't think it was necessary to go into those facts, that we were there to discuss settlement of the case and there was no need to re-try it or continue the trial.

Mr. Hobbs said that, further, it wouldn't be necessary because we were going on the basis that we would concede

priority but that we wanted a license or release for what we had manufactured, or he also told Mr. Fidler that we had some orders that were unfulfilled, we have a contract with Snap-On, and that we wanted to fulfil them, and we discussed generally that matter and, as I recall it, Mr.

Fidler said that he thought generally such a settlement could be effected, but that they would want to have a royalty payment or some payment as royalty. We didn't discuss any specific figures, as I recall it.

Mr. Hobbs said he thought that some arrangement could be made and should be made for royalties, but, as I recall, there was no definite statement on what they were to be or the basis of them, and I think that was all, except Mr. Hobbs, I believe, raised the question as to whether or not it would be necessary for our client or Mr. Alberts' client to pay to have some untranscribed testimony typed up, and Mr. Fidler said that, no, if we settled the case obviously it wouldn't be necessary for us to go to that expense.

We were out there for an hour or so. It was in an afternoon.

Q. Now, after this conference of December 2nd, did you have any further discussion about this matter with Mr. Hobbs alone?

A. I did. I had a number of conferences lasting from, maybe, two minutes to five or ten minutes with Mr. Hobbs from time to time.

Q. Did you have any discussion with Mr. Hobbs as to Thomasma's relationship with Precision at the same time Thomasma was an employee of Automotive?

1189 A. Yes.

Q. And what was said in that regard?

A. Sometime after there was a draft of a settlement agreement, and I don't recall specifically when that was, but I remember that Hobbs and I were going over a draft in which there was a release, and I remember saying to Hobbs that I thought the terms of the release in the settlement agreement were broad enough to cover any possible liability of Precision to Fidler's client for having—if it was the fact that they had—made and sold devices, the design for which they had gotten from a confidential employee or an employee in a confidential relationship. And we checked that and then I remember saying to Hobbs that I thought the release was broad enough. The only possible question that I could see that Automotive might raise

would be on whether or not they had full knowledge of all the facts, and I remember saying to Hobbs that we didn't have a copy in our file of the Thomasma affidavit or any other information that Mr. Fidler had, and that, in fact, in our office file, we did not have the testimony in the Interference. We had very little information. So that, as distinguished from the usual case where you get a release and your file will show what is known by you and by the other side generally, our file would be quite barren, and so I suggested to Hobbs that perhaps we should get a copy of the Thomasma affidavit, and Hobbs said that he didn't think that we need to worry with your office; that there would never be any denial by you that you had such knowledge as you in fact had, and then we talked about it and Hobbs said that he would speak to Mr. Fidler, and that he was sure that even if you no longer represented Automotive, if any question were ever raised, that Mr. Fidler would agree that he would always have his file available so that we could consider, where our file was deficient, that we in effect had the information because we could get it from you.

There was one other conversation on Thomasma, and that had to do with his stock. I remember that I was opposed to pressing Mr. Fidler to get the stock back. I thought we might do it some other way, but Hobbs disagreed and said we could get it from you people at the same time that the settlement was made.

Q. Aside from this conference of December 2, 1940, did you ever have any further conference with either Mr. Fidler or myself or any representative of Automotive?

1191 A. No.

Q. Did you attend any conferences that Mr. Hobbs had with Mr. Larson or Mr. Carlson or both of them?

A. Yes.

Q. Do you recall when one of those conferences took place?

A. Well, I recall one conference with Mr. Larson and Mr. Hobbs and I. That, on checking my time sheets I find was on December 11th. My time sheet doesn't show it, but I recall just stepping into the room when Mr. Larson and someone else were discussing with Hobbs at the time that they signed the contracts, and in checking

through Mr. Hobbs' time sheets. I know that that must have been on December 24th.

Q. What was said on December 11th at this conference at which were present you and Mr. Hobbs and Mr. Larson? Do you remember the principal things that were discussed?

A. Well, the conference was taken up largely with talking about what we wanted to get in the settlement and what Precision's business was. I remember that we discussed the question of how many orders there were yet unfilled and, as I recall it, we discussed the income from those. I couldn't say definitely what it would be, 1192 but I have an idea that, as I recall it, it was some substantial sum, something like \$35,000 or so, that was to be paid to Precision. That wasn't its net profit. It seems to me its gross was something like that, and they would make some profit on that, and we discussed the importance of getting a release or a license to permit them to continue with those sales. We also discussed the Thomasma stock a bit.

I think it was at that time or shortly after that—must have been just before it—that I talked with Hobbs about that Thomasma stock, but I recall we discussed that.

Q. Did you ever hear a discussion about any other wrench?

A. Yes, that was mentioned at that conference, but I think that not a great deal was said about that. I do recall the fact that they had a new wrench or were particularly interested, so far as the wrench they were then selling was concerned, merely in fulfilling their existing orders.

Q. At the conference which you attended in Mr. Fidler's home on December 2, 1940, or at any other conferences which you had with Mr. Hobbs either alone or when Mr. Larson or Mr. Carlsen may have been there, what 1193 threats of prosecution for perjury or statements that perjury had been committed were made by anyone?

A. Well, no threats of prosecution were made at any of those conferences. I don't recall Mr. Hobbs ever using the exact word "perjury". I do recall that before we went out to see Mr. Fidler, Hobbs told me that he had talked with Alberts and, as I recall it, he told me that Alberts said he thought a document had been faked. I heard Mr. Hobbs testify this morning. His account of the Alberts conversation with him is no doubt more accurate, but my

recollection is that Hobbs told me that Alberts told him that he, Alberts, thought a document had been faked.

Q. At any of these conferences that you have mentioned, was there any suggestion or intimation or statement with respect to a bonfire or disposing of any testimony or doing away with any of the records?

A. No.

Mr. Lindsey: That is all.

Cross-Examination by Mr. Goms.

Q. Mr. Haight, you weren't in the conferences and negotiations, right in the middle of them, you were more 1194 or less on the edge, were you not?

A. That is correct.

Q. And you didn't sit in on all the conferences that were had between, respectively, Mr. Hobbs and his clients, and Mr. Hobbs and Mr. Alberts, and, respectively, Mr. Hobbs and Mr. Fidler and Mr. Lindsey?

A. No.

Q. Were you ever in any conference with Mr. Hobbs and Mr. Alberts?

A. No, sir.

Q. Were you ever in any conference with Mr. Hobbs and Mr. Fidler and Mr. Lindsey, or either of them?

A. I was in one conference with Mr. Fidler and Mr. Hobbs. I was never in any conference with Mr. Lindsey.

Q. Do you recall when that was?

A. The one with Mr. Fidler?

Q. Yes.

A. That was out at his home?

Q. But not at the office?

A. No, sir.

Q. When you went out to Mr. Fidler's home on Monday afternoon, December 2nd, what did you know of this case?

A. Well, I knew what Hobbs told me when he 1195 asked me to go out, and what he had told me on the Elevated, riding out there, and in the cab from Davis Street over to Mr. Fidler's home.

He told me of his phone call from Alberts, and then the conference with Mr. Larson and Mr. Carlson following that. He told me that—do you want me to just recite it as

I get it? It is substantially as he testified to this morning, but I don't recall the details.

Q. Let me have your version of what you knew when you sat there at Mr. Fidler's bedside? What did Mr. Hobbs tell you about the Interference?

A. Mr. Hobbs told me there had been an Interference that was then pending, that in the course of the Interference Larson had offered a drawing or drawings, that Alberts called him and said that he had talked with Mr. Fidler and Fidler had a statement of a witness or prospective witness which caused Alberts to believe that a document or documents was faked; that Alberts had told him that it was necessary, he thought, to get another lawyer to represent Larson because Alberts represented another party in the Interference and there might be adverse interests; that Precision was selling these wrenches, that it was important to them to fulfill their existing obligations to Alberts' client.

And then we discussed the question of how to approach Mr. Fidler. It was pretty much a horse-trading proposition, how we should go about it. He also told me about the fact that all the testimony was not yet transcribed because I remember I was to remind him if he failed to bring that question up.

Q. You knew at that time he had not read any of the Interference testimony, did you not?

A. Yes.

Q. Was any explanation made of that to you as to why he had not read it?

A. Not that I recall.

Q. Had you seen his letter of November 29th to Mr. Fidler?

A. No, I don't think so. I don't remember having seen it.

Q. You say you hadn't seen that letter?

A. No.

Q. But you were going out there on the assumption that the Interference was all over, that you were going to concede priority?

A. Yes.

Q. And that was based on the fact that that drawing was faked?

A. No, I don't think that is quite an accurate statement of it.

Q. Well, were you going to dispute at all with Mr. Fidler the statements he had made to Mr. Alberts about the faked testimony in the Interference?

A. No, I recall that. Mr. Hobbs and I, going out there, on the way out, we discussed that, and we decided as a matter of tactics it was better to tell Mr. Fidler we didn't propose to discuss that.

Q. Why was that better as a matter of tactics?

A. Well, I thought it was better because, to my mind, if Mr. Alberts, who had put in these documents thought there was some question about their genuineness, why, I was quite sure that the opposition would think there was plenty of question about it. If that was so, we would be dealing with Mr. Fidler on one of his strong points, the question of his succeeding in the Interference, and that would no doubt be one of his strong points in the settlement.

Q. You threw away any argument you had about what was in the Interference when you walked into that room, didn't you?

1198 A. Yes, we did.

Q. And you stated Mr. Hobbs opened the conversation by relating to Mr. Fidler the facts. What did he tell him?

A. If I said that I was in error. What Mr. Hobbs did do was to tell Mr. Fidler that he, Hobbs knew generally the facts.

Q. And then Mr. Fidler replied with something. What did Mr. Fidler say?

A. Well, I don't remember exactly his language, but when Hobbs said he knew generally, why, Mr. Fidler suggested that maybe he had better know a little bit more in detail, or something of that kind, about some of the facts, and so he proposed to tell us something about the Thomasma affidavit.

Q. Well, he didn't say, "I propose to tell you about the Thomasma affidavit." He said something about the Thomasma affidavit, didn't he?

A. Yes.

Q. What did he say about it?

A. Well, he said that he thought that perhaps Hobbs should know a few more of the facts and a little more of the detail about this statement or affidavit that he had,

and he said that he had gotten it from a man who 1198½ was an employee or had formerly been an employee — I don't know exactly how far he got, but he no sooner started than Hobbs told him he didn't think it was necessary.

Q. He had his papers there, did he not?

A. As I recall it, he did.

Q. Did he show you the Thomasma affidavit?

A. No, not in the sense of pointing it out line for line. As I recall it, he had some papers in his lap or in his hand, but we were not shown them in the sense of being given them to examine. He may have offered to let us see them.

Q. He told you what he had there?

A. As I recall it, yes.

Q. Didn't he have a photograph of a faked drawing there also?

A. No, I don't recall seeing any drawing or photograph or photostat of a drawing.

Q. Was there any discussion of that faked drawing?

A. No, except as in his first remarks, as I recall it, Mr. Fidler didn't even get a chance to tell us anything much about the drawings or the affidavit.

Q. What did Mr. Hobbs say in cutting him off?

A. Well, in substance Mr. Hobbs said, "I do not 1199 think it will be necessary for you to go into that, or for you to discuss that. After all, we are here to try to settle the interference and at the outlet I will say that one thing that we are willing to do is concede priority in the course of a settlement, and if we do that I don't think it is material what the evidence has been to date."

Q. Did Mr. Fidler acquiesce in that?

A. Yes, he said, "Well, all right then, we can discuss settlement."

Q. He didn't press the story upon you at all of what he had?

A. No, I don't think he was as anxious to drop it as Mr. Hobbs and I were.

Q. As a matter of fact, to use a colloquialism, he had you over a barrel on that issue, didn't he?

A. Well, I strongly suspected he did.

Q. You say there was some conversation there about the untranscribed portion of the record. What was said about that?

A. The only thing said on that was that Hobbs wanted

to get permission not to have it transcribed so as to save our client the money, and Mr. Fidler said that that would be all right, that it wouldn't be necessary if we settled 1200 it, or something of that kind.

Q. And you know that the transcription was interrupted at about that date?

Mr. Lindsey: What do you mean by that?

The Witness: I understood it was.

Mr. Ooms: Q. That somebody gave the Reporter instructions not to transcribe anything further?

A. Yes. My recollection is that Hobbs wrote or called Alberts and told him it wouldn't be necessary. I am not sure on that.

Q. You stated that later Mr. Hobbs and you had a discussion about the stock which Thomasma had in Precision. Do you recall when that was?

A. I remember that something was said about that in Larson's presence. That would be on December 11th, and I remember also that Hobbs and I talked a bit about that, but I do not recall whether that was just prior to or just after December 11th. It may have been that it was a good deal earlier, because I remember that I was a little hesitant about asking for too much from Mr. Fidler and Mr. Lindsey.

Q. Did you know why Mr. Hobbs was asking for the stock at all?

1201 A. Well, I was told by him that Thomasma had some stock. I don't remember now that Hobbs explained in detail how he had gotten it, but that Larson wanted it back. I was told that both by Larson and Mr. Hobbs.

Q. Did you know then that Mr. Hobbs had written a demand to Mr. Thomasma on December 6th demanding that he return the stock because it was unlawfully held by him?

A. He did write on the 6th, did he?

Q. Yes.

A. Well, then it was probably prior to that time that I talked with Hobbs about it, because I recall discussing with Hobbs how we should go about it, and probably that was just prior to the time that letter was written.

Q. And you told him, as I recall your direct testimony, not to ask Mr. Fidler for the stock, or you suggested that he shouldn't?

A. Well, I thought we were going to try to get too

much. It struck me, if we could get the license, to fulfill existing orders, we would be getting the most important thing, and I thought we shouldn't try to bargain for too much. I thought it was more important to try to clinch the first thing and then take care of the stock some other way.

1202 Q. How could you determine what was too much in the circumstances when all you were committed to do was to settle the Interference?

A. Well, that was just a straight horse trading proposition.

Q. When you horse trade you get as much as you can, don't you?

A. Yes.

Q. But you were against asking for the stock because that might be asking for too much?

A. That is right.

Q. Did you know why there was any right to ask for the stock at all?

A. No, I don't recall any of the details on that.

Q. You did know that Thomasma had been an employee of Automotive, the Plaintiff here?

A. Yes, I recall that.

Q. And you did have some discussion with Mr. Hobbs about the possible implication of his change of employment and possible liability for confidential disclosure?

A. Yes.

Q. What brought that on?

1203 A. Well, as I recall it, we discussed a little bit about Thomasma. When I first talked with Hobbs about the case, that was, but there wasn't any great talk on that at that time. I was after some draft of agreement had been made and Hobbs and I were going over a draft that we discussed in any detail the possible liability.

Q. Do you recall when you saw that draft of agreement?

A. No, I don't.

Q. Do you recall that there was an agreement with a provision for release in it?

A. Yes, I remember that.

Q. I hand you a draft of an agreement which is in evidence as Defendants' Exhibit No. 14, and ask you whether you have previously seen that document?

A. I can't identify it. If this is the agreement that

was entered at that time, why, then I know I have seen it, but I don't recall it from just looking at it.

Q. Do you recall examining a release provision in one of these submitted drafts?

A. Yes, I do.

Q. Would you read paragraph 8 of this agreement and read it aloud please?

A. "AMMCO, in consideration of the performance of all the foregoing by Snap-On, Precision and Larson, 1204 and each of them, does hereby release and forever discharge Snap-On and Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO has or may have had against them, jointly and severally, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in, manufacture, use and/or sale of torque measuring wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in Paragraphs 3 and 4 hereof and not yet delivered to Snap-On or disposed of by Snap-On."

Q. Do you recall whether that was the release provision in the draft which you examined?

A. No, I don't recall the details of it.

Q. But you did have a discussion with Mr. Hobbs about getting some protection of his clients against a possible claim for a confidential disclosure?

A. That is right.

1205 Q. Do you recall whether you discussed with him whether or not that particular release clause would embrace such a claim?

A. Yes. There wasn't much discussion. I remember reading it and telling him I thought it did cover it, and he agreed with that.

Q. Had anybody made any claim of possible civil liability against your clients for either a breach of confidential disclosure or any other civil trespass?

A. Not that I recall. I know that Mr. Fidler didn't when we were out there on December 2nd.

Q. He didn't mention, when you were out there, a possible claim for conspiracy against Snap-On, Larson and Precision?

A. No, not that I recall.

Q. And what did you know of the facts which might give rise to a contemplated claim of breach of confidential disclosure?

A. By "know", what had I been informed?

Q. Yes.

A. It was hearsay of about the fourth degree.

Q. Well, a lot of what we had gone into is hearsay.

A. Well, I was told that the witness who had given 1206 the affidavit to Fidler had been an employee of Fidler's client, and that he had given some information to Larson, according to his statement, and that Larson had used that in developing or in selling his wrench.

Q. Who had told you that?

A. Mr. Hobbs.

Q. That release clause which you have in your hand in Defendants' Exhibit 14, was broad enough to embrace any claim based on those facts, wasn't it?

A. Oh, yes.

Q. Did you know that that man, Thomasma, who might have been the basis for an action of that character was also the man that had the stock which you discussed?

A. Yes.

Q. Did you know that he had procured or had been given that stock for his contribution to Precision?

A. Well, I may have been told that, but I don't recall it now. I probably was. That probably was the reason that Hobbs thought this was an appropriate time to take it up, though I really don't know.

Q. Would you relate to us as nearly as you can the conversation you had with Mr. Hobbs about securing in the hands of the attorneys for the Plaintiff the possession 1207 of the testimony and the Thomasma affidavit which you talked about in your direct testimony?

A. Well, Hobbs and I had just discussed either this release clause in Paragraph 8 of Snap-On Exhibit 14, or some other release clause, and we had agreed that it was broad enough to cover any claim for use of information of a confidential nature secured from an employee of Automotive; and I then said to Hobbs that I thought that release was broad enough, and that I didn't see any possible catch, except that if Automotive could deny that they had knowledge of the facts, such as they were, and we didn't know definitely ourselves what the facts were, but if Automotive

could be in position to deny that they knew of them, then they might get around this release, partly because of the fact that it was so broad, on the ground that they hadn't intended to release any such cause of action, and so I said to Hobbs that I thought it might be well for us to get for our file a copy of this statement that Fidler had and, as I recall it, I told him that if Fidler sent us a letter telling us he was sending a copy of it, then we would have in our file sufficient so that Automotive couldn't ever get out of this release on that ground, and Hobbs told me, well, I 1208 didn't need to worry about that, that, he said, Fidler wouldn't do that, or that your office wouldn't do that, and I told him that that might be as to that office, but we didn't know that they would always represent the other side, and Hobbs said, "Well, I am sure that Fidler will either give me the information, that is, a copy of the statement, and a letter, or, as a matter of fact, they will always let us look at their file anyway if something comes up and they no longer represent Automotive."

Q. You knew as a matter of fact that the Thomasma affidavit contained those facts which you are now discussing or upon which you assumed there might be a claim or civil damages?

A. Yes, I was told that was part of what was in the Thomasma affidavit.

Q. Do you know, as an attorney-at-law, even if they were mistaken as to the facts, it wouldn't affect the validity of the release?

A. No, I don't know that. As I understand a release, Mr. Ooms, it is a question of intent. You and I can execute mutual releases intending to release whatever causes of action we might have against each other, known or unknown. Such a release, if that is our intent and it 1209 is shown, would be valid.

Of course, there are cases in which the parties have used the general language of release in order to settle a specific controversy, and it has been held, even though they are in very broad and general terms, they apply only to the specific situation. So that I always consider it important, in getting a release, to have something in the file to show what it is that we had an argument about prior to the execution of the release so we are sure that is released.

Q. Do you recall it released "claims of any name or nature"?

A. Yes. Even if it is a broad release, it isn't any good if it goes beyond what the parties knew or intended to release.

Q. As an attorney-at-law it would be your opinion, if they didn't have that information at the time of that release, you would be of the opinion they might subsequently attack the release?

A. Well, there might be a possibility of it, yes.

Q. And you knew at that time, did you not, that Mr. Hobbs was dickering with Mr. Fidler to get back Thomasma's stock?

1210 A. That is right.

Q. And you knew that Thomasma, the stockholder, was Thomasma the go-between in that confidential disclosure made?

A. That is right.

Q. In that meeting of December 11th, I think you met Mr. Larson and Mr. Carlsen in Hobbs' office?

A. No. Carlsen wasn't there. I didn't meet Carlsen, and I assume it was Carlsen—I don't remember his name—until the day that they signed the contracts. I met just Larson on the 11th.

Q. Were you there when he came to the office?

A. I don't recall the details of that. As I recall it, on the 11th he was already in Mr. Hobbs' office setting in the big chair in the northeast corner of it and I came in and was introduced and sat down right in front of Mr. Hobbs' desk.

Q. Mr. Hobbs said, "I would like to have Mr. Haight sit in here because two minds are better than one," didn't he?

A. He may have said that. I don't recall.

Q. Did you remain throughout the remainder of the conference?

1211 A. As I recall it, I did.

Q. Did you have any drafts or proposed agreements before you at that time?

A. No, not that I recall.

Q. What was the status of the negotiations?

A. Well, I may be wrong. You will know better than I, perhaps, but my recollection is at that conference we were talking about what we wanted, and we didn't at that time have on paper any proposed contract or settlement.

that we had drawn, or we didn't yet have any that had been submitted by Mr. Fidler.

Q. And the next time you sat in any conference with Mr. Hobbs and his clients was on either December 23rd or 24th when the agreements were signed?

A. That is right. Technically, your question was "sat in". I just walked in and I don't think I even sat down. I just remember walking in and meeting the other man besides Mr. Larson. I probably was not in Mr. Hobbs' office more than two minutes.

Q. You didn't remain there throughout the conference?

A. Oh, no.

Q. I think you said there was some discussion of the value of the unfilled orders?

1212 A. That was on December 11th.

Q. On December 11th?

A. Yes.

Q. And you said at one of those meetings the stock was also discussed. Was that the December 11th or the December 23rd meeting?

A. No, December 11th.

Q. Do you recall what Larson said about that stock at that time?

A. No, except he wanted it back. I don't recall any other conversation.

Q. Did you know that Mr. Hobbs had the week previously asked Mr. Fidler to assist in recovering that stock?

A. Well, I had forgotten that he had already asked the week previously. I do remember that we mentioned it, and I know that he did ask Fidler for it.

Q. You say at that same meeting they discussed the new wrench. What was said?

A. All I recall about that was the important thing from the standpoint of a license or release was to be able to fulfill their then order because Larson and Hobbs discussed it. As I recall it, Hobbs asked him how long it would take him to get his new wrench in production, 1213 or something of that kind, and they had apparently discussed that in some prior conference and, as I recall it, Larson said he could get it in production before he finished selling this 6,000 or so to Snap-On.

Q. You didn't see any wrench at that time?

A. Oh, no.

Q. Were they talking about a wrench that had been developed or one he was working on or might develop?

A. My recollection was that it was one that he had developed but he hadn't yet started to produce it.

Mr. Ooms: That is all.

Mr. Lindsey: That is all.

(Witness Excused.)

Mr. Ooms: I would like to offer in evidence as Defendants' Exhibit 102 the letter of December 6th, 1940, sent by Mr. Hobbs to Mr. George Thomasma.

The Court: If there is no objection it may be admitted.

Mr. Lindsey: No objection.

(Said document was thereupon received in evidence by the Court and was marked as DEFENDANTS' EXHIBIT NO. 102.)

1214 Mr. Fidler: Mr. Salmon.

RUDOLPH B. SALMON, a witness called by the plaintiff, having been first duly sworn, was examined and testified as follows:

1215 *Direct Examination by Mr. Fidler.*

Q. Please state your name.

A. Rudolph B. Salmon.

Q. And you are a handwriting expert?

A. Yes, sir.

Q. Do you recollect that I consulted with you in your capacity as a handwriting expert about November, 1940?

A. Yes, sir.

Q. Do you have any record by which you can refresh your recollection as to the exact time that I first consulted you in that month, November, 1940?

A. Yes, sir.

Q. When was that?

A. November 22, 1940.

Q. Now, will you please tell the Court just what transpired at that time that I consulted you, on November 22, 1940?

A. I can tell you the gist of the conversation: I cannot tell you the words that were used. You came into my office, and you had with you two documents. One was a drawing on thin, semi-transparent paper, and the other

was a photostatic copy of another drawing. You 1216 spoke to me generally about handwriting, writings in general, whether I could determine whether the same or different persons had made these drawings. We talked generally about handwriting, and the methods by which we arrived at an opinion.

And you told me something about the matter in which these writings were involved. I don't remember the details. And then after our discussion I suggested to you, if possible, to get me some additional known standards for comparison. I also asked you to bring me, or let me make an enlargement of the photostat which you had in your possession at the time.

Q. Did I furnish you with the additional information that you had requested?

A. Not at that time. Several days later, — to be exact, on the 25th of November you sent over to me a full size, a large size photograph of the drawing of which you had originally brought in a small one. And I made an examination and comparison—

At that first hearing, I might add this: that you asked me how long it would take to arrive at an opinion, and I told you I didn't know, it would take some considerable work; it was just detailed work, and I might arrive 1217 at an opinion quickly, or it might take me a longer time.

And then I made examinations on the 25th; and I also made further examinations, and made notations during my examination, on the 26th. On the 27th of November I came to your office in response to a phone call, to the effect that you had some additional drawings. I got there along about, oh, I would say 4:30 or 5:00 o'clock; and I made further examination at that time. And I stated at that time that I would still have to work on this, — the light was bad, and I wanted to do it at my leisure.

And at that time I left with you the exhibits which I had; there were the two drawings, and I also had with me the notes or memoranda which I had been working on. I asked to be permitted to take those, and you told me that you needed them the following day, and when you got through you would send that over.

Q. Now I hand you three documents; I would like you to examine them, state whether or not you know what they are; and if so, please so state.

A. It is my recollection that these documents, this photostatic enlargement is either the enlargement which I had or one similar to it. I had this thin, transparent sheet, and this is my memorandum, made during my examination.

Q. The yellow sheet you have just referred to?

A. That yellow sheet.

Mr. Fidler: At this time I wish to offer in evidence the enlargements of Larson Exhibit 27, drawing, Interference drawing, as Plaintiff's Exhibit 56; and the transparent drawing as Plaintiff's Exhibit 57; and the yellow sheet as Plaintiff's Exhibit 58.

The Court: No objection; they will be admitted.

(Said enlarged Interference drawing, said thin, transparent drawing, and said yellow sheet, so offered and received in evidence were marked respectively PLAIN-
TIF'S EXHIBITS 56, 57 and 58.)

Mr. Fidler: Q. Mr. Salmon, did you at any time during my conference with you, render to me an opinion in respect to these drawings?

The Witness: A. No, I had not yet arrived at an opinion, and I did not. I did say this: There were enough similarities to warrant an examination.

Q. Did you at any time that I consulted with you, give me any information or any opinion which would enable you to take the witness stand in court and testify in respect to the matter?

A. Oh, no; I had not yet made up my own mind, and I could not testify unless I had.

Q. Now I hand you another document which purports to be a bill rendered by you, and ask you to examine the same and explain that to the court; and particularly with respect to the statement as to opinion mentioned therein.

A. This is a stock expression which I generally use, to examination, comparison and opinion of the drawings. I usually dictate it to the girl and tell her write up a bill and make a charge of so much; and she usually follows her own discretion, if I have not told her specifically what to put in there.

Q. Did you give me any opinion of any kind, other than what you have testified here; I am speaking now in respect to the material that I furnished you in November, 1940.

A. No, I had not and have not.

Q. And this bill that you just referred to was one rendered by you?

A. Yes, after I had—I called up to ask you to send me back those exhibits for further examination. And they informed me at your office that you were ill. About 1220 several weeks later; to be exact, on the 13th of December, I contacted somebody; I thought it was you; and they told me the case was settled. And then I rendered my bill, I think it was either the day after or a short time after.

Mr. Fidler: I wish to offer at this time, your Honor, the bill identified by the witness, as Plaintiff's Exhibit—it is DEFENDANTS' EXHIBIT 52.

The Court: You offered it?

Mr. Freeman: Yes, sir.

Mr. Fidler: That is all of my direct examination.

Cross-Examination by Mr. Ooms.

Q. Mr. Salmon, your bill to the firm of Davis, Lindsey, Smith & Shonts, Defendants' Exhibit 52, is an invoice for the work that you did in this case, isn't it?

A. Well, I suppose; I don't figure it as an invoice. Generally, when I send a bill it is a comprehensive bill, without a detailed statement of exactly what was done. Because I do not ordinarily keep a record of hours and minutes of time worked.

Q. Does that envelope contain any record of what you did?

1221. A. Only in general.

Q. Will you read it to us?

A. Yes; it is headed Zimmerman vs. Larson, Case No. 721; on the document, a drawing of a patented tool. And then I have the name of the person who hired me, Davis, Lindsey, Smith & Shonts. Mr. Fidler, and the phone number. Then I have the date, which the date says November 22, Fidler in for conference with the exhibits. H 25 Fidler sent full size photostat drawing, and I mentioned a comparison; and H 26, further examination, and made notations. H 27, went to Fidler's office with exhibits and saw in there the markings of the sizes one-half unlike; H 28, 12/13, phoned Fidler, case settled; 12/27 sent bill; 12/30, received check for \$50.00. And then I have a notation: May 3, 1943, Ooms and Freeman came in, and I told them

that I had made an examination, I have given no definite opinion, was not through with my examination at the time the case was settled.

Q. Between the time that you finished with everything shown on this envelope and Mr. Freeman and I called on you, Mr. Fidler and Mr. Hibben and talked with you?

A. Yes, after that about a week.

Q. That was not noted on there?

1222 A. No, because that was not part of the case.

Q. Were we part of the case?

A. Yes; I expected when you and Mr. Freeman came over it was for the purpose of examining me, and I made a notation.

Q. What dates were the other people in?

A. About a week before; I didn't make an entry of it.

Q. In your invoice, Defendants' Exhibit 52, you say in the legend, I assume, describing the work you did, your examination?

A. Yes.

Q. You did make an examination of three documents?

A. Yes.

Q. Comparison?

A. Yes.

Q. You did make a comparison of three documents?

A. Yes.

Q. An opinion of drawings?

A. Yes.

Q. You did render no opinion of these drawings?

A. No, I did not.

Q. In re *Zimmerman vs. Larson*?

1223 A. Other than the fact that I said they warrant an examination, because there are some similarities.

Q. And that is the most you said, they warranted examination?

A. That is the most I said; I never gave an opinion, because I never reached one.

Q. Does your envelope show the amount of time you put in on this?

A. No, other than dates.

Q. Now, the first time that Mr. Fidler saw you was on November 22, was it not?

A. That is right.

Q. And at that time he brought to you the question of documents, in the form of a reduced photostat, which is

not here; and he brought to you a so-called standard of comparison, which he has put in evidence as Plaintiff's Exhibit 58; is that correct?

A. That is right.

Q. Did you discuss with Mr. Fidler at that time the principles employed in determining the authorship of a questioned document?

A. In a general way, I think I did; I do not recall exactly.

1224 Q. What did you tell him?

A. I do not recall exactly; but I told you the gist of it.

Q. Will you tell us that?

A. Yes. I explained to him that drawings were a little bit different than writings, they required a lot of detail work, that you could not make snap judgment in most cases; that it would take considerable time to arrive at an opinion, if I could arrive at an opinion. And that is briefly what I told him. We talked generally, Mr. Fidler told me some few facts about the case; but frankly, I was not interested; and I do not remember what they were, other than these few facts: He said there were three concerns involved in this thing, and a couple of men; one was on the west side and one was on the north side, and his client; I don't know who they were. The names did not impress themselves on me.

He said that he had some testimony; or there was some affidavits or statements made, and he was in a quandry; the same person had told two stories, and he said, "I want to know what I am up against in this, because I don't want to be caught with my pants down." That was his expression.

1225 And then he told me there was an allegation that this questioned drawing was made by a high school boy; he had had some experience in mechanical drawing, and I told him it does not look to me like a school boy's job.

Q. You were pretty positive about that.

A. Well, it was just a general impression; no, I was not positive about anything in this case, until I had fully completed my examination and made up my mind as to what the facts were.

Q. Did you take mechanical drawing in high school?

A. Yes, I did.

Q. Didn't you tell me that you had taken mechanical drawing, and this was not a high school boy's drawing?

A. I didn't say it was not; I wouldn't make a statement.

Q. Did you tell me, did you tell him the method used in making an examination of documents of this character?

A. I think I did; I wouldn't be positive.

Q. They are practically the same as you use in determining the authorship of any disputed document?

A. Except that in writing you have some other elements than you have in the drawing.

Q. You have more figures to go on?

A. No, you have fewer in the drawing; but you have a care in drawings that you do not have in normal writings.

Q. And basically, the whole problem of examining a disputed document, where you are attempting to determine authorship, is to take the two documents and find individual characteristics on certain letters and figures?

A. That is right.

Q. And if you find in the two documents that there are so many individual characteristics appears in both, on the same letters and figures to be explained by coincidents, that establishes authorship?

A. Ordinarily.

Q. And in this case you made a tabulation, did you not, of the figures that were similar and characteristic in the two drawings?

A. Yes; that is, I found the characteristics, which — the same characters and same numbers and the same letters which appear upon both drawings.

Q. And appeared in characteristically individual characters?

A. Not necessarily.

Q. Well, I have your sheet here, your work sheet?

A. That is right.

1227 Q. Which is, I think, offered by the plaintiff as Plaintiff's Exhibit 58, but previously offered by the defendants as Defendants' Exhibit 12. I ask you to look at that for a moment, Mr. Salmon; you find at least a dozen characteristic figures that are common in those two drawings, did you not?

A. You mean the same letters and the same figures?

Q. Yes, and in characteristic formations individually.

A. Not necessarily; this merely shows their locations.

Q. Well, now, will you look at the first one?

A. Yes.

Q. You have the word drill; and in the standard of comparison I think you indicate that that is at the top of the sheet; and in the questioned document in the lower left; that is correct, is it not?

A. That is right.

Q. And that is what appears on these two documents, do they not?

A. That is what I am telling you, that is what I did; I made a notation of where these letters and words and characters appear upon the sheet.

Q. And that is all that that tabulation is?

A. That, together with my general workings; there isn't anything particular about it; there are some similarities, there are some instances—

Q. Except for the No. 3 which is down about the middle of the sheet?

A. That is right.

Q. Where you have no note in the right column?

A. That is right.

Q. And the number 6, a little farther, where you have no note in the right column?

A. That is right.

Q. And down below the last column, 9/16th, and that is merely your way of writing the fraction throughout; all the other figures in there—and I ask you to examine the documents before you answer—show a characteristic individual formation in both documents; and you have so indicated it on that tabulation.

Mr. Smith: If your Honor please, the question is double barreled; and we object to it for that reason. It is not a question of whether or not there are characteristics common to both these documents; the only question before your Honor is what did this statement of Mr. Fidler—and what opinion, if any, did he give to him. That is the only question on which this witness is presented to your Honor, or to this Court for examination. That is the only thing covered by his direct examination.

Mr. Ooms: I might say one of the things he delivered to Mr. Fidler was this statement—

The Court: He has already answered this question.

The Witness: I did not deliver this to Mr. Fidler, I might add.

Mr. Ooms: Q. You left it with him the night of November 27th?

A. Only because I was on my way home; and I told Mr. Fidler I would leave the exhibits with him and pick them up the next day, on the way down, his office being between the Illinois Central and my office. At that time I handed them to him and said I will pick them up in the morning. He said I won't be able to give them to you in the morning, because I am going to need them, I am going to need them tomorrow. This was never intended to be in Mr. Fidler's office, because it was a work sheet. I never gave this to Mr. Fidler for any purpose whatsoever; it was left there through inadvertence, or because I happened to be going home.

Q. And it remained there two and one-half years?

1230 A. I was not interested after the case was settled; if I had any further work to do, I would have surely got it back.

Q. Did you discuss that work sheet with him on the night of November 27th?

A. No, I did not; I did not use a work sheet. I was only there a half hour, or three-quarters of an hour; I was using this other exhibit and comparing that with the questioned document. And the light was bad; it was in a large office. I said I cannot do anything here, let me work on this. In fact, I made a notation on my file that certain of the characters are so much different than my plates that it raised a further question.

Q. Is that on the work sheet?

A. No, it is on my file; I did not use the work sheet at that time.

Q. And you got to his office at what time, on the night of November 27th?

A. It was around 5:00 o'clock.

Q. You called your home that night and told them you would be late for dinner?

A. That is right.

Q. How long did you remain there?

1231 A. I should say I was there until about 6:00.

Q. You live near the I. C. Railroad, do you not?

A. Yes; I go south.

Q. And you called your home and said you would be late for dinner?

A. That is right.

Q. And you think you were there from 5:00 to 6:00?

A. Yes; I would not be definite; I know it was not long enough time to make a thorough examination of the documents.

Q. But you had been working on the documents for three days?

A. But I had not on this new one which was in Mr. Fidler's office, which I had not seen before.

Q. And you have not seen it since?

A. I have not seen it since.

Mr. Ooms: I think we are all in agreement that the document cannot be found.

Mr. Fidler: I have made a thorough effort; that was the document of November 27th, which he is now talking about.

Mr. Smith: As a standard of comparison.

Mr. Fidler: Yes.

1232 Mr. Ooms: It is the second standard of comparison.

Mr. Fidler: Yes.

Mr. Ooms: The first one was the one these notes are on.

Mr. Fidler: That is correct.

Mr. Ooms: Q. When you saw Mr. Fidler on November 22nd he told you he wanted an opinion by the following Thursday, for a conference?

The Witness: A. I don't think so; I do not recall he made any specific time.

Q. How much time did he spend with you that time?

A. I would say an hour and a half or two hours; my file shows two hours.

Q. I thought you told me your file didn't show any time.

A. In that particular instance; here is the file, and you may look at it.

Q. I had better; and that is the only indication as to the amount of time in any of those conferences on your work sheet?

A. That is right.

Q. Or on your envelope?

A. That is right.

Q. Now, he promised to you at that time to get 1233 further materials to you on the following Monday?

A. I don't know whether you would call it a

promise. I asked him if he wanted me to have the enlargement of the photostat made, because it was a different size than the other drawings. He said, "No, I will send it to you." I said, "That is all right."—And several days later, on the 25th, he sent it over.

Q. Did you promise him a report before November 28th?

A. I did not promise him a report at any time, that I can recall.

Q. In your conference with him on November 22nd, you went over the two drawings in some detail?

A. No, just casually, looking for something to see whether it warranted an examination or whether it would be worth while.

Q. Didn't you tell him that afternoon there were many items similar which indicated both drawings were made by the same man?

A. I did not put it that way; I said there are enough similarities here to warrant a further and complete examination.

Q. And then you made a further and complete examination on the following Monday, Tuesday, and Wednesday?

1234 A. I don't know what dates they were, but there were several days; I didn't work all day on them. Whenever I had time, I would work on them several hours, perhaps; and then set them aside, and work in the afternoon or the next day. I do not keep any actual record of time worked.

Q. You reached no conclusion as to the authorship of that document, the questioned or disputed document?

A. I had a belief that they might have been written by the same person; and that is why I worked on them. If I thought they were not, I would not have taken up the time, or done it.

Q. Didn't you get any further than a belief you had on the afternoon you examined them?

A. The first time I saw them?

Q. Yes.

A. I just had an idea I would like to examine it further, and I did; that is why I had the enlargements, and that is why I did the work.

Q. What did you tell Mr. Fidler in your most conclusive

report to him as to the authorship of that questioned document?

A. The last time I talked to him was in his office, that evening I was there; and I said, "This complicates the situation, because it is so much different than the others; I will have to do a lot of checking on it."

Q. The missing drawing complicated the situation?

A. Yes, because certain of the characters and letters—I picked out one-half as typical or markedly different.

Q. You had found some marked resemblance in the earlier statement of comparison?

A. I would not say they were remarkable.

Q. I said marked.

A. There were similarities, yes.

Q. They were the kind of similarities a handwriting expert looks for?

A. Yes.

Q. And they were the kind that if you found sufficient of them you can take the stand and say they were—

A. No, if I arrived at an opinion that the same person wrote them, then I take the stand; until then, I won't.

Q. Will you examine those drawings a moment, Mr. Salmon; you find that the letter "r" in the standard document in the left corner, and in the disputed document in the right center, had a round, individualistic tail on it, the open or final stroke of the letter "r", did you not?

Mr. Smith: Object to that, if you; Honor please; 1236 on the ground it is entirely immaterial, as long as he said he did not arrive at any opinion; why, or what comparisons he made, makes no difference. The only question is what did he tell Mr. Fidler.

The Court: Why do you want to go beyond that?

Mr. Ooms: I want to go beyond that because he left this sheet with Mr. Fidler,—of course, the document speaks for itself; and I withdraw the question. That is all.

Redirect Examination by Mr. Fidler

Q. Do you recollect, Mr. Salmon, what you told me in requesting that second drawing, why you wanted it and whether you wanted a drawing of later vintage than the other drawing?

A. I don't remember why I requested it; I know I did

request it. When I was making my examination, primarily, I used this sheet; because various letters and numbers appeared at different places,—I used this sheet for the purpose of locating them, so that when I got into my examination fully I would not have to hunt all the time to find the word drill on one sheet and the word drill on another;

I designated them as being the word drill in the top 1237 center of one sheet, or the lower left hand corner, so

when I was made to make my final determination I would have them handy so I could place them in juxtaposition, rather than hunt through the sheet to find two letters or characters of the same number or figure.

Q. Do you recollect telling me that in drawings a man's work may improve over a period of time, that characterizations appear differently?

A. I do not recall it, but I would say that if I spoke about it.

Mr. Fidler: That is all.

Recross Examination by Mr. Ooms.

Q. Just one more thing; in the last line of Defendants' Exhibit 12, you point out the fact that the fractional information is different in the two documents, don't you?

A. Yes.

Q. That was not merely a matter of locating where the fractions occurred?

A. No; in that particular case I showed it definitely, the difference.

Q. And that is the only indication you made there, 1238 that any of the symbols are different in the two sheets?

A. Well, unless you take the three on—the three and the six; if I had nothing to compare with, I would not put it down. I did not find three in the one sheet, and found it on the other; I surely wouldn't have used that as a basis of comparison when I did not have a three on the standard; when I did have it on the questioned.

Mr. Ooms: That is all.

(Witness excused.)

Mr. Smith: Mr. Rattery, please.

THOMAS L. RAFTERY, a witness called by the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. State your name and address, please, Mr. Raftery.

A. Thomas L. Raftery; office address, 10 North Clark Street.

Q. What is your occupation?

A. Court reporter.

Q. Mr. Raftery, were you employed in the matter of taking down Interference testimony in Interference 1239 N. 77565, entitled Larson vs. Zimmerman?

A. The Larson vs. Zimmerman case, yes.

Q. And who employed you to take the testimony in that case?

A. Mr. Alberts, patent attorney.

Q. That is Mr. Harry C. Alberts?

A. That is right.

Q. Is it your recollection that you started to take the testimony in that case on or about October 24, 1940, and with certain interruptions, continued taking it until on or about November 4, 1940?

A. That is right.

Q. Now, in taking that testimony what means did you use, ordinary notebooks or teletype?

A. Shorthand and ordinary notebooks.

Q. And how many books of testimony in the Larson Interference did you take over that period of time, from October 24 to November 4?

A. Two complete books and parts of two others.

Q. So that we may line them up properly, let us refer to the first one that you took any part of that testimony in as book No. 1; was that a full book or a part of a book?

1240 A. That was just a part of a book.

Q. And what was in the remainder of that book?

A. Other records.

Q. Book No. 2, was that a full book or part of a book?

A. A complete book.

Q. Book No. 3?

A. A complete book of the same case.

Q. Book No. 4?

A. Book No. 4 was a portion, the last part.

Q. The last portion of the testimony which you took, you mean?

A. That is right.

Q. Was that book filled up, the remainder of the book, with testimony in order cases?

A. It was.

Q. Mr. Raftery, I show you what has been entered in evidence in this case as Automotive's Exhibit No. 16, and ask you if you ever saw the original of that letter?

A. I did; I received the original.

Mr. Smith: If your Honor please, so you may follow the testimony, I merely state that this is a letter which Mr. Fidler wrote to Thomas Raftery, and sent copies to Mr.

Alberts and Mr. Hobbs and Mr. Wacker, in which the 1241 following was stated: "The parties involved in the above Interference have agreed to settle the same, without further contest. It will not therefore be necessary for you to appear and testify in this matter in response to the subpoena previously served upon you. The subpoena served upon you requests you to produce—" and then a lot of documents are listed.

(Counsel reading further, concluding with the words, "We would appreciate it if you would attend to this immediately.")

Mr. Raftery, prior to your receipt of that letter, had you transcribed some of the testimony which you had taken in the Larson and Zimmerman Interference?

The Witness: A. I had.

Q. And what had you done with the portion of the testimony which you had transcribed?

A. I delivered two copies to Mr. Alberts and one copy to Mr. Fidler, at his office.

Q. Now, at the time that you received this letter of December 26th from Mr. Fidler, what is the fact as to whether there was some testimony remaining untranscribed?

A. There was some left untranscribed.

Q. Now, prior to your receipt of this letter, you 1242 had been served with a subpoena to appear and give testimony in the Larson-Zimmerman Interference; is that correct?

A. That is correct.

Q. Do you know about when you were supposed to appear in response to that subpoena?

A. Well, I was reminded of it when I gave my deposition, as being the 27th of December.

Q. The 27th or the 23rd?

A. The 23rd of December; before Christmas.

Q. Did you appear and give any testimony at any hearing on the Interference?

A. I did not.

Q. In response to that subpoena?

A. In response to that subpoena.

Q. Were you advised not to appear?

A. I was.

Q. Do you recall who so advised you?

A. Somebody from Mr. Fidler's office, who had served me with a subpoena.

Q. Now, after you received the letter of December 26th of Mr. Fidler, what did you do with reference to your notebooks and your transcribed testimony, whatever you had in your hands; what did you do?

1243 A. I delivered it all to Mr. Fidler.

Q. Mr. whom?

A. Or Mr. Alberts, except the two notebooks with portions of the testimony in.

Q. Well, then, do I understand that you delivered what you referred to in our question as book 2 and 3, which are completely filled with Larson Interference testimony?

A. Along with the rest of the transcript.

Q. Along with the rest of the transcript; in other words, at that time you also had in your hands some transcript evidence which had not yet been delivered; is that correct?

A. I believe I had. Maybe I delivered it before that, I don't know; but if I had any left, it was delivered then.

Q. Now, how soon after the receipt of this letter of December 26th did you deliver these notebooks that you refer to, to Mr. Alberts?

A. Within a day or two.

Q. And where did you deliver them to him?

A. To Mr. Alberts' office, in the First National Bank Building.

1244 Q. And who was there on the day you delivered them?

A. Mr. Alberts or his secretary.

Q. No one else?

A. No one else.

Q. Will you tell us what your conversation was with Mr. Alberts at the time that you delivered these notebooks?

A. Well, he told me that the case had been settled, or being discontinued; that he was not going to go any further with it; some of the testimony given by other witnesses proved to him that his client did not give him the exact status of the case, and the exact truth of it.

Q. Now, how many books did you deliver to Mr. Alberts on this day or two after December 26th?

A. Two.

Q. What about the other two books; why didn't you deliver all four books?

A. Because I had other court records in them.

Q. Did you have any conversation with Mr. Alberts at the time you delivered the two books, regarding your failure or refusal to deliver the other two?

A. Yes; I said I would mark off the notes with pencil or ink in such a way that they would be either hard 1245 to read, would not be easy to read.

Q. Did you take a receipt from Mr. Alberts for the two books which you did deliver to him?

A. I do not believe I did.

Q. Did you display to Mr. Alberts at that time the two books that you were not delivering to him?

A. I did.

Q. I hand you two notebooks which you produced at the time of the pretrial deposition, and ask you what those two books are.

A. These are the books containing the first portion of the testimony and the latter portion.

Q. Did you show these to Mr. Alberts at the time you delivered the other two books to him?

A. I did.

Q. And at that time had you scratched out the testimony in the Larson-Zimmerman Interference which is contained in these two books?

A. I had.

Q. Did you show Mr. Alberts where you had scratched the testimony out?

A. I did.

1246 Q. At whose request was it that you scratched out the portions of the Larson-Zimmerman Interference testimony which appeared in these two books?

A. I don't know whether I did at anybody's, or whether I just did it on my own, so that I would show that they were not to be used by me any more.

Q. Now, for the purpose of the record in this case, will you indicate what pages of your notebooks which I am now handing you includes testimony which you took in the Larson-Zimmerman Interference?

A. In the first one, pages 150 to 154, both inclusive.

Q. That is in—

A. 150 to 154; and in the other book, which was the last part of the testimony taken, on pages 1 to 9, both inclusive.

Mr. Smith: If your Honor please, at this time I offer as Plaintiff's Exhibit 14 the book which has just been identified by Mr. Raftery, No. 14 being the book which is dated on the outside, "From October 7th, 1940." And as Plaintiff's Exhibit 15, the other notebook, which is dated on the outside, "From October 30th, 1940."

(Said notebooks so offered and received in evidence 1247 were marked respectively PLAINTIFF'S EXHIBITS 14 and 15.)

Mr. Smith: Q. Mr. Raftery, had you previously worked for Mr. Alberts?

The Witness: A. Yes.

Q. How long prior to the time that you took the Larson-Zimmerman testimony?

A. I don't remember exactly; but not so very long.

Q. I hand you Plaintiff's Exhibit No. 14, and ask you if you can tell from that notebook how long previous to the time of your taking the Larson-Zimmerman testimony you had worked for Mr. Alberts?

A. October 17th.

Q. What year?

A. 1940.

Q. What was the name of that case?

A. Before the Examiner of Interferences in the United States Patent Office, Walgreen Company and Charles R. Walgreen, Jr., opposer, vs. Greenwald Hosiery Company—

Q. What pages contain the notes that you just referred to, that you took in the Walgreen case?

A. Pages 100 to 132, both inclusive.

Mr. Smith: That is all.

1248

Cross-Examination by Mr. Ooms.

Q. Mr. Raftery, when you delivered the notebooks to Mr. Alberts, as you testified, you did so upon the instruction received in that letter, Plaintiff's Exhibit 16, did you not?

A. That and telephone conversation with Mr. Alberts. I told him I had received the letter and would bring them down to him.

Q. When did you have that telephone conversation with Mr. Alberts?

A. I imagine it was just about the time I received the letter; or maybe he called up a little bit before that and told me that the case was dismissed.

Q. You are sure that telephone conversation was not afterwards, in a call made by you?

A. I believe the call was made by him; I am not sure.

Q. You called him?

A. I think that is probably right.

Q. Did you have the letter when you called him?

A. If I remember rightly—well, I don't remember exactly whether I did, or whether he had talked to me beforehand and told me I was probably getting a letter, or how it came about. But anyhow, there was telephone conversation; and I told him I was bringing the books down.

1249 Q. You don't know, though, whether you got the telephone call first or had the letter first, or whether you made the telephone call or Mr. Alberts made the call?

A. No, I don't know.

Q. Mr. Fidler had not engaged you in that case?

A. He had not.

Q. Wasn't it a little unusual to get a letter from the attorney who had not engaged you in the case?

A. I took the matter up immediately with the attorney who had engaged me; I went down and saw him, telephoned.

Q. You had had some conversation with Mr. Fidler earlier in the month, when you were delivering some transcript; and you borrowed \$20.00 from him?

A. That is right; I did not borrow, I thought he was going to pay for his copy; and he told me that Mr. Alberts was paying for his copy, and that he would advance me the \$20.00, to collect from Mr. Alberts.

Q. Do you recall that we took your deposition in this case on May 6th, Mr. Raftery?

A. Yes, it was on a Thursday.

Q. Two weeks ago next Thursday?

A. Yes.

Q. Do you recall that I asked you when you received that letter of December 26th, what was the first thing you did; and you answered, "Well, whether I called Mr. Alberts, or Mr. Alberts called me up, but anyhow we got in touch with each other and he told me about what had happened; and I told him that I would bring the books down to him." Do you recall that conversation?

A. I do.

Q. And then I asked you, "Isn't it a fact that you did not have any telephone conversation with him, but went to his office with the notebooks and the transcript?" And you answered, "Well, that might be true"?

A. That is true.

Q. That is a possibility?

A. That is a possibility.

Q. And when you went to Mr. Alberts' office, did you have some unfinished transcript with you?

A. I do not remember definitely whether I did or not; I took down—if I had any left, I took down the balance that I had left. Whether or not I had delivered some before that or not, or finished part of it or not, I don't know.

Q. Well, whenever you did deliver any, you delivered two copies to Mr. Alberts and one to Mr. Fidler's 1251 office, did you not?

A. Well, I either did that or I delivered them all to Mr. Alberts and he sent the copy over; I think I took some over to Mr. Fidler's office.

Q. Do you recall when you took this last page that you made to Mr. Fidler's office?

A. I do not recall.

1251 Q. Do you recall whether you delivered any to Mr. Alberts with these notebooks?

A. I don't recall that definitely, whether I did that day or not. If I had any left, I did.

Q. Now, before you received that letter of December 26th, you had been subpoenaed to testify on December 23d, is that correct?

A. That is correct.

Q. And somebody called you and released you from that subpoena, is that correct?

A. That is correct.

Q. Do you know who that was?

A. Somebody from Mr. Fidler's office.

Q. Now, during the transcribing of this testimony, there had been some direction to you to hold up further transcription, had there not?

A. Yes, I am quite certain there was.

Q. Do you recall who gave that to you?

A. I think Mr. Fidler—I mean Mr. Alberts.

Q. Do you recall whether you ever talked to Mr. Hobbs about that?

A. Well, you asked me that on that last deposition and I do remember somebody else called up but whether he told me he was taking over for Mr. Alberts or what happened, I don't remember that definitely.

Q. Except for those instructions, did you industriously turn out this transcript as fast as you could?

A. Well, I wouldn't say so very industriously because I was very busy at the time and I was sick part of the time.

Q. There was no deliberate holding up of the job?

A. There was no deliberate holding up of the job, no.

Q. And both sides were pressing you to get out the transcript?

A. Well, I don't know both sides were, Mr. Alberts asked once in a while how I was coming along on it.

Q. Didn't he call up and complain he wasn't getting it quickly enough?

A. I believe he did.

Q. Do you recall, Mr. Raftery, about two months ago a telephone conversation with Mr. Alberts about these notebooks?

A. Yes.

Q. What occurred at that time?

A. Well, he called me up and said—asked me if I remembered about this case and I told him I did and he said; well, it was coming up in some other form or some other way again and he asked me if I had heard anything from Mr. Fidler about it and I told him I hadn't and, "Well," he said, "you will."

Q. Was there any conversation about the notebooks?

A. I believe he asked me if I had any notebooks on it and I told him what I had left.

Q. Did you tell him that in that conversation two months ago?

A. That is my recollection.

Q. Isn't it a fact that you told him you had no notebooks?

A. No, I told him I had this portion of the notebooks.

Q. Isn't it a fact you told him that you had had the notebooks and Mr. Fidler had told you to destroy them?

A. No.

Q. You do recall your deposition taken on the 6th of May, do you not?

A. I do.

Q. I asked you at that time:

"Q. Now, Mr. Alberts called you about six weeks ago to ask for these notebooks, did he not?"

And you answered:

"A. He asked for the notebooks? He called me up and wanted to know if I had them.

1254 "Q. And what did you tell him?"

"A. I told him I gave him the ones that had the full notes in, had nothing else but that case in.

"Q. Didn't you tell him that you had called up Mr. Fidler and he had told you to destroy the notebooks and you had destroyed them?

"A. If I did, it was just on the spur of the moment when I did not remember, I told him I did not remember. This letter reminds me of how I happened to do that. I did not call Mr. Fidler, I know that."

Then I asked you:

"Q. Mr. Alberts called you and told you that Judge Iggoe had ordered those notebooks into court, didn't he?"

"A. No. He did not tell me that.

"Q. Who told you that they needed the notebooks?"

"A. He told me he wanted the notebooks.

"Q. And you told him you did not have any of them?"

"A. That is so."

A. That is correct; I didn't have any of the full ones but I did have portions of the others.

1255 Q. You did so testify on May 6th, did you not?

A. I did so testify.

Q. Now, prior to May 6th, Mr. Fidler and Mr. Hibben called on you about these notebooks, isn't that right?

A. They called on me about the case and asked me about the notebooks.

Q. And they showed you that letter, Defendants' Exhibit 16?

A. That is right.

Q. Then you recalled you had delivered those notebooks to Mr. Alberts?

A. That is right.

Q. And until they showed you that letter, you had no recollection of where they were?

A. Well, I hadn't paid any attention—I hadn't thought about it except—

Q. Have you finished your answer, Mr. Raftery?

A. No. What is the question?

(Pending question read by the reporter as above recorded.)

The Witness: I didn't know exactly where the other two portions that I had were and I looked them up and found them.

1256 Mr. Ooms: Q. You had told Mr. Alberts about a month before that you didn't have any, didn't you?

A. No, I told him I had the two portions.

Q. You told him that on the telephone?

A. That is correct. That is in my testimony there.

Q. Do you recall in your deposition of May 6th I asked you, reading from Page 18:

Q. You say you had talked to these other people. When did you talk to them last, Mr. Hibben, Mr. Lindsey or Mr. Fidler?

A. Mr. Hibben was down the other day and talked with me and then wanted to know if I would appear without a subpoena on this date.

Q. Was that the first time that you saw Mr. Hibben?

A. Well, Mr. Fidler was down with some gentleman. I think it was Mr. Hibben.

Q. How long ago?

A. Probably a week or two weeks ago.

Q. Did you show them the notebooks at that time?

A. No, sir.

Q. Did you tell them whether you had the notebooks—

The Witness: Oh, wait a minute.

1257 Mr. Ooms: Q. —or not?

A. Wait a minute. On the first visit, yes, I showed them the notebooks that I still have.

Q. And when was that visit?

A. A week or two weeks ago, something like that.

Q. Not longer than that?

A. No.

Q. And when was the next time that Mr. Hibben was down to see you?

A. It was this week, Monday or Tuesday.

Q. And what did he say to you and what did you say to him?

A. He said to me, 'I am going to ask you to come up and testify on a deposition,' and, 'What day will be convenient to you, or what time will be convenient to you?' and I told him I would like to have it about four-thirty, if possible, or some other time, because I might be in court and I did not want to lose what I could make in court by being up to testify on a deposition. So he asked me whether one o'clock Thursday would be all right, that is this Thursday, and I told him yes.

1258 Q. Did he examine the notebooks at that time?

A. No.

Q. Did he show you that carbon copy of a letter which you have been shown here?

A. He did.

Q. What is that?

A. He did.

Q. Did you see that at the time that Mr. Fidler and Mr. Hibben called on you together?

A. I believe I did.

Q. And that refreshed your recollection as to this whole transaction?

A. Yes.

Q. Until you saw that letter, you did not know what you had done with the notebooks?

A. I knew I had turned them over to somebody. I knew that I didn't have them.

Q. And it is your testimony today that after you received that letter, you took them over to Mr. Alberts; and whether it was preceded by a telephone call or not, you are not positive?

A. I am not positive of that, but I did—

You recall that testimony, do you not?

1259 A. Yes.

Q. Now, when you transcribed this testimony, Mr. Raftery, was it transcribed fully and correctly, as far as you went?

A. It was.

Q. Did you omit any parts of it in the parts that you actually did transcribe and deliver?

A. I believe I edited some of the cusswords that were in it, one of the witness' testimony.

Q. You took out some profanity?

A. Some profanity.

Q. Did you make any other changes in the testimony?

A. None other.

Q. Did anybody ask you to make any changes in that transcription from the notes as you recorded them?

A. Nobody.

Q. And you made no such changes?

A. None except what I just mentioned about the profanity.

Q. Now, you said you had done something to the two notebooks in evidence here as Plaintiff's Exhibits 14 and 15 to make portions thereof illegible?

A. I did.

Q. When did you do that?

A. I did that at the time I delivered the notebooks 1260 to Mr. Hibben--Mr. Alberts.

Q. Where did you do it?

A. In my office, as I remember it, before I went down to his office.

Q. Who told you to do that?

A. Nobody. I remember. I think I did that on my own because I was to deliver up the notebooks and I told him I couldn't deliver up those two and had to do something toward making them illegible.

Q. Do you recall that at the time your pretrial deposition was taken we examined those notebooks and found in the first one, Plaintiff's Exhibit 14, the only thing you did in the way of cancellation was your usual mark to show you had finished that column? Do you recall that?

A. That was the first one on which I had delivered the transcript and the transcript was in the hands of the counsel.

Q. And in the other one, Plaintiff's Exhibit 15, you made some scroll marks all over the pages?

A. That is correct.

Q. The pages can still be read, can they not?

A. To a certain extent they can.

1261 Q. You did read a part of these pages to Mr. Fidler and Mr. Hibben when they were in your office a few weeks ago?

A. I did.

Mr. Ooms: That is all, Mr. Raftery.

Redirect Examination by Mr. Smith.

Q. Mr. Raftery, just a couple of questions. Did Mr. Fidler ever ask you to destroy anything at all you had taken in connection with the Larson-Zimmerman Interference?

A. Unless I interpreted it that way from that letter.

Q. Did you interpret that letter that you should destroy any books or papers?

A. Not that I should destroy them, but I should turn them over.

Q. To whom?

A. To Mr. Alberts.

Q. Did Mr. Lindsey ever ask you to destroy any documents in this case or any testimony you had taken?

A. No, I never met Mr. Lindsey before until the 6th when I was on that deposition.

1262 Mr. Smith: That is all.

The Court: Q. Is it customary to turn your original notes over to lawyers?

A. Judge, that is the first time I ever done it.

Q. That isn't anything peculiar to the patent practice, is it?

A. Not that I know of.

Q. You have taken other patent work?

A. I have.

Q. Did anybody ever ask you to do that before?

A. Nobody.

The Court: That is all, Mr. Raftery, I think.

You haven't any further questions?

Mr. Ooms: No.

Mr. Smith: No.

Mr. Ooms: I would like to offer in evidence as DEFENDANTS' EXHIBIT 103, the original deposition of Mr. Raftery taken by the other side on May 6, 1943.

Mr. Smith: For what purpose, Mr. Ooms?

Mr. Ooms: For the purpose of impeachment, showing contradictions between his present and his previous testimony.

The Court: You mean the whole thing?

1263 Mr. Ooms: We will withdraw it.

Mr. Freeman: We have read it, so, it makes no difference.

The Court: That is what I thought.

(Witness excused.)

Mr. Fidler: Mr. Allen.

1264 VICTOR ALLEN, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Fidler.

Q. Please state your name.

Mr. Smith: If your Honor please, Mr. Raftery states he has an order from an attorney to complete some of the notes in these books and he would like to have leave to take either or both of them out.

The Court: Give them to him.

Mr. Smith: If it is agreeable to the court, we will allow that to be done and then return them.

Mr. Freeman: We don't want them. We didn't ask for them to be produced. They are yours.

Mr. Smith: All right.

Mr. Fidler: Q. Please state your name.

A. Victor Allen.

Q. You are now and were in 1940 vice president of the Automotive Maintenance Machinery Co., plaintiff in this case?

A. Yes, sir.

Q. You were present at a conference held in my 1205 office on November 28, 1940?

A. Yes, sir.

Q. Who were present at that conference?

A. Mr. Joe Johnson, president of Snap-On Tools, Mr. Harry Albert, attorney for Precision, Mr. Fred G. Wacker, president of Automotive, Mr. Raymond Lindsey, Mr. George Thomasma, and myself.

Mr. Fidler: What is that answer?

(Answer read by reporter.)

Q. Raymond Lindsey?

A. Mr. Fidler, Pardon me.

Q. Referring to me?

A. Yes, sir.

Q. Who came into that conference first?

A. Into the conference?

Q. Yes.

A. Mr. Wacker and I came into your office first, that is, we were sitting there, and Mr. Joe Johnson and Mr. Alberts came in.

Q. And later who else came in?

A. Mr. George Thomasma came in.

Q. Who left that conference first?

A. As I recall it, Mr. Thomasma left first.

1266 Q. Who left next?

A. Mr. Johnson and Mr. Alberts.

Q. Do you know the purpose of that conference?

A. Yes.

Q. Please state it.

A. It was to hear Mr. Thomasma's story.

Q. Now, please tell the court what took place at that conference beginning with the time that Mr. Johnson and Mr. Alberts came in and ending with the time when they left.

A. When Mr. Johnson and Mr. Alberts came in, Mr. Johnson said, "Gentlemen, we come with clean hands," and I thought that was a rather strange remark.

So, we then sat down to hear Mr. Thomasma's story. You questioned Mr. Thomasma at length and we all heard his story. Then I believe Mr. Alberts asked one or two questions of Mr. Thomasma.

And then Mr. Thomasma left and Mr. Johnson and Mr. Alberts left.

Q. Do you recall any conversation between me and Mr. Alberts or me and Mr. Johnson?

A. I don't recall what conversation there was between you two.

1267 Q. Do you recollect any answers given by Mr. Thomasma to any questions asked by Mr. Alberts or by Mr. Johnson?

A. I believe there was a question by Mr. Alberts as to whether Mr. Thomasma and Mr. Johnson had ever met previously. I think there was that question.

I recall that I was surprised to hear Mr. Johnson say he had not met Mr. Thomasma and that Mr. Thomasma turned to Mr. Johnson and said, "Why, Mr. Johnson, you remember me?" or words to that effect.

Q. Did you hear Mr. Johnson's testimony in this case in court here?

A. I believe not. I think—I am a little confused as to the date. I think I heard Mr. Johnson's deposition in Mr. Freeman's office.

Q. Well, Mr. Johnson's testimony here on Page 357 of the record states:

"A. Mr. Alberts introduced me; it was the first time that I had met Mr. Fidler; and he made the statement at that time that we were there solely in behalf of Snap-On Tools Corporation. To which Mr. Fidler replied that so far as he was concerned, Snap-On was Precision, and Precision was Snap-On."

1268 Q. Referring just to that last statement, did you hear any such thing as that at that conference?

A. No, I did not.

Q. Again Mr. Johnson testified in this way: He was asked:

"Q. Did Mr. Alberts say anything about what he was going to do in connection with the interference?"

And Mr. Johnson answered:

"A. Oh yes; he did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson; and that if the facts were substantiated by Mr. Larson, that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings; and also that he would withdraw as attorney for Larson."

Do you recollect anything like that being said?

A. I don't think all of that was said. What actually I heard was Mr. Johnson, after the testimony, stood up and said:

"Gentlemen, this smells to the high heavens."

And later, Mr. Alberts said that that if the facts
1269 or data that had been presented to us was substantiated later, he would withdraw from the case."

Q. Were you present at all times during that conference in my office on November 28th?

A. Yes, I was.

Q. You understand these questions I am asking you have to do only with that conference?

A. That is right.

Q. And Mr. Johnson further testified as follows:

"Q. Did Mr. Fidler make any statement to you or Mr. Alberts, or to both of you, as you were leaving?"

And he answered:

"A. Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker; that Mr. Wacker had spent considerable money on tension wrench patents, and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Did I make any such statement as that at that meeting?

A. No, you did not.

Q. Mr. Johnson further testified in response to 1270 this question:

"Q. Mr. Fidler told you that?"

And he said:

"A. Yes, sir; he made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States patent officials, and that it was even a matter for the United States District Attorney."

Did I say any such thing as that at that meeting?

A. No, you did not.

Q. Now, Mr. Alberts testified in this case and I refer to Page 430 of the record. Did you hear Mr. Alberts testify?

A. Yes, I did, here in this court.

Q. And Mr. Alberts testified:

"—and Mr. Fidler made a statement to me that he was proceeding on the basis that Snap-On was Precision and Precision was Snap-On, and only under those conditions or under that understanding would he give us the information directly from Mr. Thomasma."

Did I so state at that meeting?

1271 A. Not that I heard.

Q. Mr. Alberts further testified as to what happened:

"A. Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane."

Was anything like that said at that meeting?

A. Not at that meeting, no.

Q. Mr. Alberts further testified, on Page 431 of the record, as follows:

"Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?' or 'What do you think we should do?' Mr. Wacker replied and said, 'Well, it is up to you.' and Mr. Fidler said, 'Well, you are here now. I told you I would get you the information firsthand. I have Mr.

Thomasma here. We might as well go ahead with the 1272 conference,' and we then proceeded. He called in Mr. Thomasma."

Did anything like that take place at that meeting?

A. No.

Q. Mr. Alberts further testified, on Page 432 of the record, with respect to the examination of Mr. Thomasma: "—and if I have anything to add I will ask permission later on to direct some questions to him."

He having previously testified that I was to go ahead and do the examining.

Do you know whether there was anything said at that conference about asking permission or what happened in that respect, do you, Mr. Allen?

A. No, I don't recollect.

Q. Mr. Alberts further testified as follows: "He was asked:

"Q. Did you ask Mr. Thomasma any questions?"

And he replied:

"A. When Mr. Fidler said that he was through, and asked me if I had any questions, I said I had a few questions; and he said go ahead. So I examined Thomasma on what he had known about Snap-On Tools, and about myself."

1276 Do you recollect anything like that?

A. No.

Q. Mr. Alberts went on to testify with respect to Thomasma:

"—if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson and Carlsen refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me.

"I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked if he had met Mr. Joe Johnson then; he said no.

Was anything like that said at that meeting?

A. Mr. Alberts asked him if he had met Joe Johnson and he said yes and Mr. Thomasma said yes.

Q. Those other statements about Mr. Thomasma, what Mr. Thomasma said?

A. I heard nothing like that. This is the part I remember of what you just spoke.

1274 Q. Mr. Alberts further testified:

"I asked him why he did not come to see me, if he

was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that Larson and Carlson insisted if I knew that any ex-employee of Precision was connected with the Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Was anything like that said at that meeting?

A. No, there wasn't.

Mr. Freeman: A little slower, please?

Mr. Fidler: Q. Mr. Alberts further testified, Pages 434 and 435 of the record:

"Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that meeting, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmerman; that they would use their influence on Larson to see that that was done; that I saw no other way out of it."

Was anything like that said at that meeting?

A. No, there wasn't.

Q. Mr. Alberts further testified on Page 436 of the record:

"I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Was anything like that said at that meeting?

A. No, there wasn't.

Q. Mr. Alberts further testified, on Page 437 of the record:

"Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a 1276 concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and settled promptly, or else Mr. Wacker would instruct him to unleash the dogs. And he continued by saying that he

had already talked to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter."

Did I say anything like that at that meeting?

A. No.

Q. Mr. Alberts further testified, on Pages 437 and 438:

"Mr. Zimmerman was then residing at Hartford. During the discussion they told us that Zimmerman no longer was with Automotive Maintenance Machinery Company, and that he was then living in Connecticut. And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer."

Did Mr. Wacker and I get into a discussion as to the merits of Mr. Zimmerman as an engineer?

1277 A. No, you did not.

Q. And Mr. Alberts further testified on Page 438 of the record, as to this question:

"Q. And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?"

And he answered:

"A. Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation."

Do you have any recollection of anything like that being stated at that meeting?

A. No, I do not.

Q. I ask you when did you, if ever, become aware that Kenneth R. Larson and any of his witnesses had testified falsely in Interference No. 77565?

A. Well, I heard Mr. Larson confess it in this court the other day.

Q. Was that the first time you were ever aware of that fact?

1278 A. Yes, sir.

Q. Did you at any time charge Mr. Larson or any of his witnesses with the crime of perjury—

A. No.

Q. (Continuing.) —on account of the testimony given in that Interference?

A. No.

Q. Did you at any time threaten to institute prosecution against Mr. Larson or any of his witnesses unless there was transferred to your company the Larson application and the sum of \$500 and the execution of the agreement between Precision and Larson involved in this case?

A. No, I did not.

Q. Did you at any time promise to withhold complaint against Larson or any of his witnesses and suppress evidence of his or their perjury?

A. No, I did not.

Q. Did you at any time before or after the execution of the agreements involved in this case do any act to suppress the perjury of Larson or the perjury of any of his witnesses?

A. No.

Q. Did you threaten Snap-On, or its attorney with 1279 the crime of personally concealing knowledge of the crime of perjury?

A. No.

Q. Did you at any time threaten Snap-On and its attorney with alleged criminal conspiracy to defraud Automotive?

A. No.

Q. Did you at any time before or after the Snap-On agreement threaten or continue to threaten Snap-On?

A. No.

Q. Did you at any time make any threats or repeat any threats against Snap-On or its attorney?

A. No.

Q. Did you at any time force them?

A. No.

Q. Did you at any time exercise any duress or do any acts that were in the nature of duress?

A. No.

Q. Did you at any time do anything to compel Snap-On to do anything with respect to the cancellation of an agreement between them and Mr. Larson, which agreement is dated September 28, 1938?

A. No.

Q. Did you ever talk at all to Mr. Kenneth R. 1280 Larson or to Mr. Walter Carlsen, or any of the witnesses testifying in the Interference No. 77565, or to Mr. Harry C. Alberts, or to Mr. Hobbs, or to Mr. Joseph

Johnson, about the subject matter of the Interference and the settlement thereof?

A. No.

Mr. Fidler: That is all.

Cross-Examination by Mr. Freeman.

Q. Now, please tell us as best you can just what questions were asked of Mr. Thomasma and the answers given by Mr. Thomasma at the meeting of November 28, 1940?

A. Why, Mr. Freeman, I couldn't remember those questions.

Q. You couldn't?

A. I would have to look at the record. I could read them to you. I don't remember all the questions asked or answered.

Q. But you remember specifically what Mr. Fidler asked you as to whether or not Mr. Alberts had made any particular statement and he read from the record and you answered "No"?

A. That is right.

Q. That you remember definitely?

A. I remember those things, yes, sir.

Q. That is you—

A. But I don't remember the question you just asked, what questions were asked of Thomasma and what answers did he give. I couldn't remember each answer and each question.

Q. I understood you to say you had no definite recollection as to any of the conversations that took place there? And I am speaking about the meeting of November 28, 1940.

A. Well, I had certain recollections, as you would probably have in a meeting of that kind, certain highlights that stood out I remembered but, as for the whole thing, I am not a patent attorney and I couldn't go into detail on the thing with you but I did hear the highlights of the conversations and I tried to recall them to you.

Q. Why don't you give us then the highlights of the Thomasma examination?

A. Well, I think Thomasma—

1282 Q. You have given us all the absences, that is, what wasn't said. Now, I would like to know what was said.

A. Well, I think Thomasma's recital of the various things he did—it was more of a story than any answers he might have given. We were there to hear his story and we heard it.

Mr. Freeman: Read the answer, Mr. Reporter.

(Answer read by reporter as above recorded.)

Mr. Freeman: Q. Well, can you give me his story then?

A. Well, as I recall the story, briefly, he had during the time of his employment with us worked on a tension indicating instrument or wrench with Mr. Larson and at that time he had become a partner or an officer in another company who were going to start to make these wrenches; and that he looked at a drawing which was supposed to have been made by a high school boy and he had made it himself, so he said.

The situation, as he outlined it there, was that he was a disloyal employee and he gave his whole story as to what had happened and why.

Q. Well, what was the "why" part of his story as to why it happened? Go ahead and tell us.

1283 A. Well, as I recall it, I don't know what his reasons were for doing it—

Q. Whatever he told you at this meeting is all I want.

A. Well, I think I have given you what he told or the gist of the whole thing.

Q. You have given, to the best of your ability, your recollection of what transpired?

A. I think so. I have heard a great deal in the trial and I don't want to inject things I have heard since this happening in 1940 into something I heard then and I have to be sort of careful that I don't do that, you see.

Q. Now, before Mr. Johnson and Mr. Alberts came into the room, you were there with Mr. Wacker and Mr. Eidler? That is correct, is it not?

A. That is correct.

Q. And what discussion did you have then prior to the time Johnson and Alberts came into the room?

A. What discussion? Oh, I would say we just generally discussed the things at this meeting.

Q. Is that the best answer you can give, Mr. Allen?

A. Why, I think so. I don't recall the exact wording.

Q. Did you discuss the story you wanted to present to Mr. Johnson and to Mr. Alberts?

1284 A. I didn't discuss that, no. That was in the hands of our attorney.

Q. Was it discussed either by Mr. Fidler or Mr. Wacker? It isn't material who did the discussing.

A. No, I don't think so. I don't believe we were there long enough to have any discussion particularly before they got there, if that is what you mean. You mean did we discuss what we were going to say or what Mr. Fidler was going to say?

Q. Well, was there any plan as to the presentation of the story you wanted to get across to Mr. Alberts and Mr. Johnson who were coming there to listen to some story?

A. No, I had no plan on that.

Q. Did you know, you, personally, prior to the time Mr. Johnson and Mr. Alberts came into the room on November 28, 1940, what the story was that was going to be presented to Mr. Alberts and Mr. Johnson?

A. I did not know personally.

Q. Do you know why Mr. Johnson and Mr. Alberts were present?

A. Yes, I did.

Q. And tell us what you know about that.

1285 A. Well, they were there to hear the story of Mr. Thomasma, exactly as I was.

Q. You hadn't heard Thomasma's story before?

A. No, I had not.

Q. Had you had an opportunity to read any of the correspondence that took place or was exchanged between your counsel, Mr. Fidler, and Mr. Wacker?

A. No, not any specific thing I could put my finger on.

Q. Weren't you generally informed with respect to the activity of the Precision Instrument Company?

A. Only in the manner of sales. You see, my work is largely sales and I don't handle the patent end of our business, so, I would be only informed with respect to certain effects of sales.

Q. Did you ever go out to Des Plaines and do any scouting around as to what Precision Instrument Company was doing?

A. Yes, I did.

Q. Who was with you?

A. I believe on one occasion one of our district salesman and on another occasion our engineer.

Q. And just tell me what was your purpose in
1286 doing this so-called scouting?

A. Well, I wanted to determine what this type of

wrench was of which we had been hearing in the trade and which we had heard was manufactured in Des Plaines and which we had heard was a Chinese copy of our product.

Q. Who had reported to you that it was a Chinese copy?

A. Various people in the trade.

Q. People that had seen the wrench?

A. Yes, people who had heard about it or had seen it or learned something about it.

Q. Did you take any steps to get one of the wrenches?

A. Not at the time, no. We later purchased one to look at it.

Q. And about how long was it between the first scouting trip you made to Des Plaines and the second one?

A. Now, I am not sure as to dates, Mr. Freeman, but I believe there must have been four or five months between the two visits. I first went to sort of verify a rumor and the next time I went I questioned certain people in the automotive business in Des Plaines with respect to this tool or instrument.

Q. You actually were in the Precision plant on one of these visits, were you not?

1287 A. I was never in the Precision plant.

Q. Did you have any of your associates that went out with you go into the Precision plant?

A. No, we did not want to go into the plant on either occasion.

Mr. Freeman: That is all.

1288 Mr. Smith: No further examination of Mr. Allen.
(Witness excused.)

Mr. Smith: Mr. Lindsey.

Mr. Lindsey: I wonder if I may withdraw for the purpose—

Mr. Smith: Yes. Mr. Lindsey is withdrawing at this time for the purpose of testifying.

The Court: All right. The record may show that. Does he have to file a formal withdrawal?

Mr. Smith: I think it is sufficient on the record, with your Honor's approval.

The Court: It is all right with me.

Report of Proceedings.

HARRY W. LINDSEY, JR., a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. What is your name and address, Mr. Lindsey?

A. Harry W. Lindsey, Jr., 120 Abingdon Avenue, Kenilworth, Illinois.

Q. You are a member of what law firm, Mr. Lindsey?

A. Davis, Lindsey, Smith and Shonts.

1289 Q. Patent Attorneys in Chicago?

A. Patent Attorneys.

Q. How long have you been practicing law, Mr. Lindsey?

A. Nearly thirty-two years.

Q. And how long in Chicago?

A. I have been in Chicago twenty-two years. I came here in June, 1921 with the firm of Rector, Hibben, Davis and Macauley. I became a member of that firm in 1923 and I have been a member of that firm ever since, except it has had its name changed.

Q. When did you first become involved in any way in the Larson Zimmermann Interference?

A. I would say, directly, on December 9, 1940.

Q. What was the occasion of your becoming involved at that time and just to what extent and how?

A. Mr. Fidler asked me to come into his room to confer with Mr. Wacker and Mr. Fidler about a situation in connection with this Interference and some suggested settlement which had gotten under way by that time. I had heard of this Interference for sometime before that. Mr. Fidler and I have lunch frequently together, and in a very general way we talk about our cases. Unfortunately, I read a newspaper most of the time at noon, so I didn't pick up a great deal concerning it, and then during December, and in fact in November, I had a very heavy case in Grand Rapids, before Judge Roemer, that ran for some days. So I wasn't in my office a great deal prior to December 9th.

I may say that we adjourned the Grand Rapids case, we recessed the day before Thanksgiving, and then I returned to Grand Rapids the following Monday, as I recall, and I

was there a few days, and I was called into this conference on December 9th, shortly after I had returned to the city.

Q. Do you recall an occasion upon which Mr. Fidler was going before Judge Barnes on a motion in the Larson-Zimmerman Interference?

A. Yes, I recall that.

Q. Can you fix the date?

A. "I couldn't fix the date exactly." It seems to me that it was prior to the time I went to Grand Rapids, probably early in November. I happen to know the date now because I have heard it, but I wouldn't have recalled it of my own recollection, I am quite sure.

Mr. Fidler came into my office rather early in the morning and was rather disturbed, and he told me that 1291 he had been attending the taking of the depositions in this Interference and that Mr. Alberts had instructed the witnesses not to answer some questions, and that he was rather suspicious of the testimony. He didn't go into any great detail, because he didn't have an opportunity, and he asked me if I thought he would be justified in advising Judge Barnes why he was asking some searching questions, and I asked Mr. Fidler, "Well, have you got any proof that there is anything wrong with this case?"

He said, "No, it is all on suspicion. I suspect some things."

And I told him by all means not to make any allegations or accusations until he had had sufficient proof, that I had been before Judge Barnes on several occasions and I didn't think that he would take kindly to any reflection upon witnesses or lawyers.

I may say, Mr. Smith, I am not trying to recite the exact words. That is too long ago. But that was the sum and substance of the conversation which I had at that time.

Q. On December 9th, at which time you were called into Mr. Fidler's office with Mr. Wacker present, what 1292 was the subject matter of the discussion at that time?

A. I wish to correct one thing I said. I don't believe Mr. Wacker was present that day. It is my recollection—

Q. What was said?

A. Mr. Fidler had outlined to me what the situation was. He told me that in substance—and again I am not trying to use the same language, it is too long ago—that Mr. Alberts had taken the testimony of nine witnesses, includ-

ing Larson, and that they had some very impressive exhibits, and he referred in particular to some drawings or a drawing and to a very impressive board which contained some wrenches. And he told me that from the start he rather suspected something in the case.

He told me about Automotive's long research work and development work which resulted in the Automotive wrench, that the Larson wrench or the wrench shown in the Larson application was quite similar. He told me about Thomasma. He mentioned, I know, the conference on November 28th at which Thomasma told his story to Mr. Alberts and Mr. Johnson and Mr. Wacker.

I now know Mr. Allen was there. I don't know whether I knew it at that time or not. He told me that he had talked to the handwriting expert and that he couldn't 1293 get a definite opinion, had been unable up to that time to get a definite opinion from Mr. Salmon. I asked him why he did not get Mrs. Keeler, because at that time I knew of a case Mrs. Keeler was in and I knew she was an outstanding handwriting expert and, as I recall, he said he couldn't get in touch with her.

And, in general, he told me the main facts behind the Interference and the facts as far as they had developed and as far as he knew them.

I may also say that he felt, and he stated to me, that he doubted whether the Larson testimony was true, that Larson was a man capable of building up this story which was supported by Larson and eight other witnesses. The testimony, according to Mr. Fidler, seemed to dovetail in very well, and it seemed to be supported by drawings and invoices and by wrenches, and from his experience, Mr. Fidler's experience, he didn't think that any layman was able to get these witnesses together and build up this story, if it was false, and that is what worried him. He couldn't say that it was false because it was so perfect, and he couldn't put his fingers on who really engineered the thing, if it was false.

1294 Q. Was there any talk about any offer of settlement which had been made up to that time?

A. Oh, yes. Mr. Fidler informed me, as I recall now—and, understand, I am not trying to repeat the words, it is too long ago, it is just my recollection—but Mr. Fidler advised me that Mr. Hobbs and Mr. Ed. Haight had called at his home and that they wouldn't talk about the testi-

mony; they didn't want to talk about it, and that they had made a proposition and, as I recall, Mr. Fidler showed me Mr. Hobbs' letter and also Mr. Fidler's letter to Mr. Hobbs.

Whether I actually read the letter at that time I couldn't say, but I do know that Mr. Fidler gave me the substance of it, and I refer to Mr. Hobbs' letter of December 6th to Mr. Fidler, Defendants' Exhibit No. 66, and Mr. Fidler's letter to Mr. Hobbs of December 6th, Plaintiff's Exhibit No. 29.

Q. From that time on, December 9th, 1940, did you take any active part in the negotiations which were ultimately concluded by a settlement?

A. Very active.

Q. On December 24, 1940 or December 23, 1940?

A. Very active.

1295 Q. What was the first thing you did in connection with the negotiations for settlement following your talk with Mr. Fidler on December 9th, 1940?

A. As I recall, Mr. Fidler advised me that the proposal made in Mr. Hobbs' letter to Mr. Fidler of December 6th was not wholly satisfactory to Mr. Wacker, and we discussed terms, which we thought would be fair, and I don't know whether I recommended it or Mr. Fidler suggested, that he draft a form of contract, and I may say that this time I was still very busy on this case in Grand Rapids because I was getting out a brief, it had been running for days. So I wasn't preparing any drafts. I was letting that to Mr. Fidler.

On December 11th—I have checked that with Mr. Fidler and other records, and that is the only reason I remember that particular date—I had a conference with Mr. Fidler and Mr. Wacker. Mr. Wacker was rather impatient about the situation. It was costing him considerable money notwithstanding that Thomasma had told his story on November 28th. The investigation by Mr. Wise was continuing and, incidentally, Mr. Wacker asked me if I thought that that investigation should be called off and I said by

1296 no means, that it should be continued, because we hadn't sufficient proof that there was anything actually wrong in the Interference. We tried to explain to Mr. Wacker what the situation was, that we were confronted with this Interference through no choice of our own, and we were obliged to run down the facts; then, as I recall,

Mr. Fidler said he had heard nothing from Mr. Alberts and Mr. Johnson since the date of the conference in November, and Mr. Fidler prepared a draft.

I knew Mr. Hobbs had the highest respect for him and I thought Mr. Hobbs had a high respect for me, and high regards. So I suggested that I call Mr. Hobbs and tell him that we had prepared, or Mr. Fidler had prepared a draft of agreement which I had reviewed, and that in view of Mr. Wacker's impatience we wanted to have a conference immediately, and to come to some agreement or go ahead and take our depositions, that our time was running.

It was agreed that that be done, and I called Mr. Hobbs on the telephone and, unfortunately, I suppose I was a little too abrupt. I told Mr. Hobbs that we had prepared a proposition and that I would like a conference the next day, because we were submitting it with the understanding that it would either be turned down or we were going ahead with our depositions.

And Mr. Hobbs was very angry. He said he didn't care whether I or Mr. Wacker was Hitler—I remember that very clearly—and he hung up the phone without saying good-bye.

As Mr. Hobbs has already suggested, and if the Court may have been able to discern, I not have somewhat of a temper, and it made me very angry to have Mr. Hobbs deliberately hang up in my ear when I meant no offense, and I hadn't been discourteous, and had no intentions of being discourteous, and thereupon I dictated what I called "minimum terms". It is in evidence as Plaintiff's Exhibit—at any rate, it is the one that is dated 12-11-40, and entitled "Minimum Terms for Total Settlement."

Q. I hand you a document and ask you if this is what you are now referring to?

A. This is the document that I am referring to.

Mr. Smith: I would like to offer in evidence, if the Court please, as Plaintiff's Exhibit 59, the document which Mr. Lindsey has just identified as being "Minimum Terms for Total Settlement".

1298 (Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT NO. 59.)

The Witness: While I have a quick temper, it is over very quickly, and after I dictated this memorandum I cooled off very considerably, and was rather ashamed at

myself, that I got mad, and I called back Mr. Hobbs and I started to tell him that I was sorry about our altercation before, earlier in the day, and he said, "Well, I want to apologize to you. I shouldn't have hung up in your ear. My secretary was there when I did it and she is here now, and when I hung up she told me that I was no gentleman, and," he said, "let's forget it," and I said, "I am more than willing to do it."

He said, "I can't see you today, but will you and Mr. Fidler have lunch with me tomorrow at the Union League Club?" where he is a member.

I may say, I never showed this Plaintiff's Exhibit No. 59 to Mr. Hobbs. We started a fresh discussion that day.

Mr. Smith: Q. That day, do you mean the day of the luncheon?

A. The day of the luncheon at the Union League 1299 Club, which was December 12th, 1940.

Now, I have refreshed by recollection, and I think that is the day.

Q. Who was at that luncheon other than Mr. Hobbs and yourself, if anyone?

A. Mr. Fidler. No one else. Just the three of us.

Q. What was the discussion at that luncheon?

We were attempting to reach a basis for settlement of the Interference. Mr. Hobbs had proposed a royalty. Mr. Wacker had proposed a higher royalty and, as I recall, Mr. Hobbs said that Precision was in no position to pay any royalties for a wrench, and the discussion really revolved upon what could be done by way of consideration to Wacker for a license from Wacker to Precision to take the place of cash royalties, and we discussed that at some length.

I told Mr. Hobbs that we weren't interested in granting any license, as I understood Mr. Wacker's position; that I didn't see why Precision, or, rather, Larson, did not grant us, that is, Zimmerman, a concession of priority. That would have terminated the Interference. We could have done nothing about it.

A concession of priority is a very simple paper in 1300 which the party who wants to give up their Interference simply says, in substance, "I concede priority in the invention to my opponent." And I told him also the same thing could be accomplished by a mere statement of abandonment in the Patent Office.

He reminded me that Snap-On was the legal owner of the Larson application, and under the rules of the Patent Office the consent of Snap-On was necessary, and he said, besides, that he wasn't willing to have Larson merely give us a concession of priority because he wanted to protect his client, he was afraid that we would issue that Zimmerman Patent immediately and sue the client, that is, Precision, for infringement, and they wanted to have the opportunity to finish making the wrenches which were on order from Snap-On, and he said that they ran several thousand in number.

In view of his position that he would not grant a simple concession, the thing that we were most desirous of having, and we told him so, and he questioned whether Mr. Alberts would agree to release the Larson application so that Larson could do so, there were several suggestions made.

One of them was that there be a cash consideration, 1301 that the Larson application in Interference be turned over to Automotive and, as I recall, that day there was also a discussion about another Larson application that we considered, whether it would be worth while to take over.

I want to say now that at that time I had never examined any of these applications. I had seen the wrench. Mr. Fidler had shown me the wrench. I think he showed me a wrench by—no, he didn't either, just an Automotive. So I wasn't familiar with the applications. I was relying entirely on Mr. Fidler's judgment as to the value of that.

We also wanted, and we told Mr. Hobbs, that there should be an acknowledgment of validity of the Zimmerman patent, and I don't know whether there was any discussion as to particular claims or not, but certainly in my past experience in settling numerous Interferences, I am sure that we at least gave Mr. Hobbs a definite idea that we would want Precision to acknowledge the validity of any claims that might issue in the Zimmerman patent, because of the common subject matter shown in the Larson and Zimmerman applications.

As I recall, it was agreed that Mr. Fidler would work further on his draft of an agreement. I can't recall 1302 definitely at this time whether actually a written instrument was submitted to Mr. Hobbs on the 12th or not, but I do know that for several days thereafter Mr. Fidler was preparing an agreement, and occasionally he

would come in and ask me about some term or provision. I couldn't tell you what they were now. It is too long ago.

Q. When was the next conference held between any of the parties looking towards the settlement of this Interference, as you recall?

A. The next conference that I knew of was on December 13th, as I recall.

Q. Do you recall who was at that conference and where it was held?

A. Mr. Hobbs, Mr. Alberts, Mr. Fidler and myself.

Q. Where was it held?

A. It was held in Mr. Hobbs' office, as I recall.

Q. Can you tell us what was discussed at that conference?

A. At that conference we discussed and reviewed very much what we had the day before with Mr. Hobbs. As I recall, there wasn't much, in addition, said. The two conferences occurred so close together that it would be impossible for me at this time to segregate the two and say exactly what was said on one day and what was said on another day.

Q. Do you recall whether anything was said in the December 13th, 1940 conference by Mr. Hobbs or anyone else with reference to who was going to represent Larson and Precision in the event the Interference was continued?

A. Yes, I remember that very distinctly.

Q. What was said and who said it?

A. Mr. Hobbs made it very clear to Mr. Alberts and to Mr. Fidler and me that he had been retained by Precision to simply represent Precision and Larson in the settlement negotiations, and he said he didn't want to have anything to do with the Interference directly, that he didn't want to be the attorney of record in that case, and he wanted us to understand that, and there wasn't any question about what his position was.

In other words, he didn't want to be attorney of record in the Patent Office. That left only Mr. Alberts upon whom we could serve any papers. He was still officially representing Larson in the Patent Office.

Q. What next did you do in connection with a proposed settlement of this Interference? When I say "you" I mean you personally and not your firm.

A. Well, matters were drifting along. We hadn't heard from—there weren't any more conferences for a few days.

and on December 18th Mr. Fidler received, from Mr. Alberts, Mr. Alberts' long six page letter of December 17th, 1940.

Q. That is the one that is in this record as Defendants' Exhibit No. 73?

A. That is correct. Mr. Fidler came to my office and we discussed the letter. The first three pages of it, mostly closely typewritten, or rather, the first two pages, were a long dissertation by Mr. Alberts about a Larson application in which he stated, in effect, that Larson had filed an application and that it really covered an invention by a man by the name of Walraven. I remember that part of the letter very well, because I remarked that I wondered if Mr. Alberts was in the habit of filing applications in the names of wrong parties if in fact the one in Interference was not the invention of Larson. That was something that we were not concerned with, who was the inventor of this second Larson application.

1305 Then he proposed that Automotive give to Snap-On a free license for a period, a short period, he called it, and he went so far as to attempt to require Automotive to acknowledge validity of a patent which would issue on an application which had not even been filed. It struck me as a very unusual demand when that application was not involved in the Interference. Then he made it clear to me, to Mr. Fidler and me in this letter, that he was not disposed to release legal title to the application in order to permit Larson to give Zimmerman a concession of priority which would terminate the Interference.

In the second from the last paragraph of his letter he says:

"Without the concessions herein made by Snap-On Tools Corporation, Larson and his nominee could not effect settlement with Automotive Maintenance Machinery Company, and this proposal has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of this controversy."

1306 Now it was clear to Mr. Fidler and me that Mr. Alberts was definitely serving notice on us that we would either have to accept his proposition as set forth in his letter of December 17th or he would not have anything to do with Larson or permit Larson to agree to concede

priority. It was evident from that flat statement of Mr. Alberts that we had reached an impasse.

Whereupon Mr. Fidler and I on December 18th, 1940 agreed that there was no use in wasting any more time.

We served notice on Mr. Alberts that we proposed to take certain testimony on December 23rd, and we accompanied that notice with a letter which I wrote to Mr. Alberts on December 18th, 1940, that being Plaintiff's Exhibit No. 30. I also sent a copy of that to Mr. Hobbs, that is, of the notice and also the letter, and the letter that I sent to Mr. Hobbs is dated the same day, that is, December 18, 1940, and is Plaintiff's Exhibit No. 31.

Q. All right.

A. Am I answering these questions too fully?

Q. That is all right. I will stop you if I think so.
1307 After this notice was served, and the letters of December 18th had been written to Mr. Alberts and Mr. Hobbs, that you have described, what was the next thing that happened in connection with the settlement of this case?

A. The next thing in connection with the settlement was on December 20th, when there was a conference—

Q. First, let me draw your attention to the letter of December 19th which you addressed to Mr. Alberts. Do you have that in front of you?

I think I am wrong. Go right ahead. I am wrong on that date.

A. I was going to say there was some correspondence leading up to that meeting, Mr. Smith.

Q. All right. Go ahead.

A. We received on the 19th, as I recall, a copy of Mr. Alberts' letter to Mr. Hobbs dated December 18th, 1940. That is Plaintiff's Exhibit No. 32.

In that letter Mr. Alberts advised Mr. Hobbs that he was enclosing a substitute power of attorney to make Mr. Hobbs the attorney of record in the Interference on behalf of Larson. He also definitely served notice on Mr. Hobbs at the same time and also on me personally, having
1308 sent a copy to me, that he would not release title to the Larson application until the agreement was settled satisfactorily to him, and I say that because he says in his letter:

Further I wish to advise that my clients, Snap-On Tools Corporation, shall be ready and willing to reassign Lar-

son's patent application, Serial No. 232,723 to Larson just as soon as Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to be it by virtue of Larson's or his nominee's inability to comply with the terms of the agreement of September 28th, 1940."

That was an agreement that Snap-On and Precision had entered into.

When I received this letter, I fear I had another flash of temper. Mr. Hobbs had made it perfectly clear to Mr. Alberts, in the presence of Mr. Fidler and myself, that he would not take any part in the Interference, and that he didn't want to be the attorney of record in that case on behalf of Larson, and in view of what had gone before in connection with the taking of testimony and the delay of 1309 the Reporter in getting out the transcript, and the failure to turn over to Mr. Fidler the testimony that should have been transcribed, I told Mr. Fidler that we thought it was time now to be rather sharp with Mr. Alberts. I told Mr. Fidler, or at least we discussed it, that it looked like Mr. Alberts and Snap-On were going to play dog in the manger, and that we may as well be rather sharp. Whereupon I wrote to Mr. Alberts my letter of December 19th, 1940, which is Defendants' Exhibit No. 68.

Q. Go ahead and explain that letter, without my asking you a question.

A. This letter has been the subject of quite a little testimony, and I would like to go into it. It is going to take me a little time to finish my answer.

1310 Q. Mr. Lindsey, as of the close of yesterday's session, we had reached the question of the letter written by you to Mr. Alberts under date of December 19, 1940. Will you continue from there, please?

A. As I explained yesterday afternoon, I had received Mr. Hobbs—I mean Mr. Alberts' letter of December 17th and also a copy of Mr. Alberts' letter to Mr. Hobbs of December 18th, and it was manifest that we weren't getting any place in the negotiations and Mr. Hobbs had sent Mr.—Mr. Alberts had sent Mr. Hobbs a substitute power of attorney and Mr. Hobbs had already informed us definitely he would not take any part in the Interference.

Whereupon, I wrote my letter of December 19th to Mr. Alberts and, as I recall it, had it delivered by a messenger.

In the letter I referred to the responsibility of Mr. 1311 Alberts and I told him that he was not in a position to dodge that responsibility. I start out by saying I want to make our position perfectly clear and I felt justified in doing that in view of the situation as it then existed.

I stated in the letter that Mr. Alberts was still attorney of record, and that was true, he had never withdrawn from the Patent Office, he had never filed an associate power of attorney. In fact, he himself recognized that he was attorney of record in the case, notwithstanding his testimony here that he had withdrawn on November 28th or 29th, whenever it was, because on December 2d, Mr. Alberts himself entered into a stipulation with Mr. Fidler in the Interference and then represented himself as being the attorney for Larson in the Patent Office.

We recognized, of course, that Mr. Hobbs was only representing Larson and Precision in connection with the settlement agreement.

Q. Just to intrude one question here, what is the fact as to whether Mr. Alberts ever withdrew as attorney for Larson and Precision in the Interference?

A. Mr. Fidler told me he had our associates in 1312 Washington examine the files and they never found and place in the file where Mr. Alberts had actually withdrawn.

Q. No, go ahead and answer the previous question.

A. Snap-On still had previous title to the Larson application, as stated in my letter.

I told Mr. Alberts that he had taken the depositions on behalf of Larson which, of course, is undisputable.

"You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive."

That information was given to me by Mr. Fidler.

"You employed the reporter."

There is no question about that.

"Part of the transcript is not reported correctly or fully."

I don't think there can be any dispute about that. One of the witnesses, Mr. Fidler told me, used a great deal of profanity which seemed to Mr. Fidler to rather cast a reflection on his character and, as I remember, Mr. Fidler told me he was one of the witnesses whom he suspected had

given incorrect testimony. It certainly wasn't reported fully.

1313 "The reporter delayed in transcribing part of the record."

And that is certainly true. The testimony of Larson closed about November 4th and we never did get all of the transcript. December 2d Mr. Fidler informed me Mr. Hobbs had suggested that what had not been transcribed be held up but we had certainly been waiting for it for a month without any excuse, as I recall.

I state on the second page of my letter in the middle of the page that he couldn't shift his responsibility to Mr. Hobbs. Mr. Hobbs, as I have already stated before, had already informed us he would take no part in that Interference and that was in the presence of Mr. Alberts.

And I stated frankly and advisedly that we did not propose to permit either Mr. Alberts or Snap-On to divest themselves of their responsibilities and those responsibilities were to have that record transcribed.

We intended to take depositions. We had served notice on Mr. Alberts we were going to take depositions and, if he wished to withdraw, it was his definite responsibility to appoint an attorney in his stead whom he knew would serve instead of trying to appoint one whom he knew 1314 would not serve.

Now, those were the responsibilities I referred to in this letter, and Mr. Alberts in my judgment then and in my judgment now has never fulfilled those obligations.

Now, as to the part of the letter which I skipped and which has been referred to here by a previous witness or so, I say:

"You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

Mr. Fidler and I suspected, and strongly suspected, that there was something wrong with that picture. We strongly suspected that there had been some perjury committed. Thomasma had given his statement. Mr. Fidler gave me the substance of that statement. It was almost incredible to me that everything Thomasma has said was also false and, yet, we couldn't believe Thomasma's story without corroboration.

Thomasma had been a disloyal employee of Automotive. I knew that while in the employ of our clients he had or

ganized or helped to organize the Precision Company to make a wrench which Mr. Fidler told me was very similar to the Automotive wrench then on the market.

1315 On the other hand, there were nine witnesses that Mr. Fidler told me about who had told this story in their testimony, that is, Larson's story, which was supported by drawings, by invoices, by these beautiful exhibits that someone got up very nicely, someone who, apparently, was familiar with Interference practice, and it was inconceivable that we could accept Thomasma's story without corroboration when it was opposed to the testimony of nine witnesses and the testimony had been taken by a member of the bar.

And I suspected at the time I wrote this letter that both Mr. Alberts and Mr. Johnson knew a lot more about that story than we did. Mr. Alberts had taken the testimony. I had no doubt that after he had left our office, after his conference on November 28th when Mr. Thomasma had told his story, that he had consulted with Larson and, possibly, Carlsen and I naturally thought that he would also approach these other witnesses, particularly those who Mr. Larson has testified perjured themselves, in order to endeavor, to make a sincere endeavor, to get the true story.

And, therefore, I said:

"You must recognize"

1316 because I suspected all of this. I didn't know it and, frankly, I was trying to smoke Mr. Alberts out. That was one of the purposes of that statement.

Then I say:

"Mr. Johnson of Snap-On has been fully advised of the situation,—so far as it has been developed—and I assure you that there are further developments to still be revealed."

Mr. Johnson had been advised of all the developments we knew of, all I knew was what Mr. Fidler had told me, and, particularly, about Thomasma's statement, Mr. Johnson had been fully advised of that.

The only other thing I knew of at the time was that we had evidence that Snap-On knew that Thomasma was employed by Precision.

Now, this sentence which I have read on its face is a little contradictory because I say Mr. Johnson has been fully advised and then I say:

"and I assure you that there are further developments to still be revealed."

Manifestly, I meant that there would be further developments and in that regard I thought there might be and with that in mind Mr. Fidler and I had decided to call 1317 as witnesses Mrs. Carlse and Mrs. Larson in an effort to try to get at some of the truth behind this story which proved to be entirely faked.

Then I stated:

"You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification."

Mr. Alberts had not withdrawn. As soon as we served notice of taking testimony, he attempted to appoint a lawyer to take his place whom he knew wouldn't serve and to me that was evidence of a plan to delay and delay and delay. And, as far as I knew, Mr. Alberts was responsible for not having had that transcript completed. We wanted to go ahead.

And, in that regard, I had in mind Mr. Alberts' letter to me of December 17th, or his letter to Mr. Fidler, in which he made his long proposition and discussed the second Larson application and served notice on us to "either accept the proposition which I state in my letter or we won't let Larson settle."

It was manifest to me from a conference we had on December 13th, Mr. Hobbs and Mr. Alberts and Mr. 1318 Fidler and myself, that Larson was willing to settle.

I suspected there were good reasons for him wanting to settle, I did not know, and I felt quite confident that it was Mr. Alberts who was blocking it and haggling for a deal and that Mr. Johnson was back of him.

Q. Now, following your sending of that letter to Mr. Alberts, did you receive or did you have called to your attention the letter which was addressed by Mr. Alberts under date of December 19, 1940 to your firm, to your attention?

A. Yes, I received that letter and I recall it very well.

Q. What did you do as a result of that letter, if anything?

A. I called Mr. Fidler into my room or went into his room and he read it and the question came up whether I should answer it and I had already made up my mind on that score. I said I wasn't going to answer it. It was a

most intemperate letter, unwarranted letter, and if I answered it, it would simply bring forth another tirade or harangue which would only be useless correspondence and we might as well go ahead and take the depositions.

1319 Q. Now, on December 20th, there has been testimony that a conference was held. Did you attend that conference?

A. I did in our office, Mr. Frank Parker Davis' office, our suite, and it was attended by Mr. Alberts, Mr. Fidler, Mr. Hobbs and myself.

Q. What was the subject matter of discussion at that conference on December 20, 1940?

A. As soon as Mr. Alberts came in and we were assembled, I still had this intemperate letter of his in mind—

Q. You are referring to what?

A. His letter of December 19th to me, Mr. Smith.

Q. All right.

A. I wanted to clear that up first and I told Mr. Alberts that he had read into that letter many things that wasn't there, many things which were not intended; that I was not accusing either Mr. Alberts or Mr. Johnson of anything in that letter, that the only thing I wanted to make clear to him was that he had responsibility with respect to obtaining the untranscribed testimony in the Interference and, if he wished to withdraw, he should file a proper substitute power of attorney in the Patent Office so we would know who to serve papers on as required by the Rules of Practice of the Patent Office.

1320 Q. When you say he, Alberts, had read into that letter something you hadn't meant, what letter were you referring to?

A. I was referring to his letter to me of December 19th, the one which I have been discussing, and in regard to reading into my letter, I was referring to my letter to him of the 19th in which I pointed out to him what his obligations were.

Q. What further discussion was there at the meeting of December 20th?

A. Well, at the meeting of December 19th, Mr. Hobbs' letter, we had submitted a joint draft of contract, as I recall, and Mr. Alberts objected. He said he wanted a separate contract for Snap-On and there should be a separate one for Larson and Precision.

Mr. Fidler drafted those two separate instruments. I discussed them with him and they were the basis of discussion at the meeting of December 20th.

And we talked back and forth about terms, there were some changes made in the drafts in longhand, and 1321 there may have been some paragraphs dictated to one of our secretaries—I forget just how they were changed, in what manner—but we spent some little time in discussing the matter, more or less horse trading back and forth, and Mr. Fidler called Mr. Wacker once or twice and Mr. Alberts called Mr. Johnson or, at least, called Snap-On, from other rooms than Mr. Davis' room.

And, as I recall, at the time the meeting broke up we had tentatively agreed to these contracts that were to be executed by our respective clients.

Q. Let me call your attention that in the answer which you have just given you referred to the meeting with Mr. Hobbs of December 19th.

A. I should have said 13th.

Q. Now, was there any arrangement made as to who should type up the agreement which you had tentatively reached at the meeting of December 20th?

A. That job was turned over to Mr. Fidler.

Q. You did not have anything to do with that?

A. I did not have anything to do with that.

Q. What was the next thing you had to do with reference to the negotiations?

A. Well, I think the next thing was, as I recall, 1322 was the meeting again in Mr. Frank Parker Davis' office the day before Christmas.

Q. Let me ask you, at the time that the agreement was tentatively reached on December 20, 1940, was there anything said about not continuing with the taking of the Zimmerman testimony which had already been noticed?

A. Yes, we agreed we would not take testimony on the 23d in that regard.

Q. Go on to this meeting of December 24th. Where was that held and who were there?

A. That was held again in the office, Mr. Davis' office in our suite, and Mr. Fidler and Mr. Alberts and Mr. Hobbs and I were present.

We had a Christmas party for the whole office the day before Christmas and it had been in progress. We hadn't, as I recall, began to eat our lunches yet and we came out

and greeted—came into Mr. Davis' office and greeted Mr. Alberts and Mr. Hobbs and exchanged the copies of the contracts which had been executed.

Q. Was there any further discussion other than exchanging the copies?

A. There was a discussion as to what to do with 1323 the testimony which had been transcribed and with the reporter's notebooks and Mr. Hobbs remarked that he would like to have all that preserved and Mr. Fidler and I said we would, too, and we thought that the safest way to have it preserved was to have it turned over to Mr. Alberts who had been attorney for Larson and was still of record and who had taken the testimony rather than leave it in the hands of the reporter.

We didn't know how long Mr. Raftery held his notebooks and Mr. Fidler and I didn't know how responsible he was. We had never met him before. In fact, I had never met him. And we had knowledge he had delayed transcribing that testimony for a month and Mr. Fidler told me he came over and got twenty dollars from Mr. Fidler and he didn't strike me as being the most responsible sort of a reporter. I had never heard of him before.

We thought the safest thing to do was to have it all turned over to Mr. Alberts.

I might say, of course, we didn't have the original testimony. All we had was a copy of what had been transcribed and we assumed that the reporter was holding the original subject to instructions from Mr. Alberts.

1324 Q. Was there any discussion as to what should be done with the copies of the transcribed testimony which had already been delivered to you as attorneys for Zimmerman?

A. Mr. Hobbs asked Mr. Fidler if he would preserve the Thomasina affidavit and, frankly, I don't remember whether the question of the testimony, of preserving the testimony, had arisen or not, that is, whether Mr. Hobbs had asked Mr. Fidler to preserve it, but I know that prior to that time Mr. Fidler and I discussed this subject to the preservation of the affidavit and we agreed that it should be preserved by all means.

We had known of litigation where there had been interferences and the testimony disappeared and the attorneys had been criticized and there were some very critical questions had arisen and, furthermore, we wanted to keep that

testimony in the event that any third person should attempt to attack the validity of the Zimmerman patent after it had issued. There was every reason why we should want to keep it.

Q. Did Mr. Hobbs state what his reasons were that he wanted all these things preserved by the respective attorneys?

A. I don't remember that he did, Mr. Smith.

1325 Q. Was that the end of your participation in the settlement of the Larson Zimmerman matter?

A. Yes, I don't think I had anything to do further. Mr. Fidler carried that on.

Q. Mr. Lindsey, one more question about this December 20, 1940 conference in Mr. Frank Parker Davis' office:

Was there any discussion at that conference specifically, or any inference that a bonfire should be held or any testimony destroyed or disposed of or hidden or anything of that kind?

A. Nothing of the sort, not one shred or one word about it.

Q. I will ask you that same question with reference to the conference at which you exchanged the executed documents on December 24, 1940.

A. The same answer.

Q. Now, what is the fact as to whether there was any mention ever made by anyone as to a bonfire or the destruction or disposing of any testimony or any evidence or any drawings or any exhibits during any of the negotiation conferences which ultimately led to the settlement between you and Mr. Hobbs and Mr. Alberts and Mr. Fidler or anyone else?

1326 A. Absolutely none.

Q. Was there any mention or suggestion in any of those conferences by any of those persons with reference to suppressing evidence in any manner whatever?

A. Absolutely none.

Q. Or for any purpose?

A. Quite the contrary. It was agreed by all four of us that the testimony and affidavit would be preserved.

Q. Now, what is the fact as to whether during any of these conferences in which you participated there were any offers made by you or Mr. Fidler or anyone else on behalf of Automotive to anyone, either Larson or Precision, or Attorney Hobbs, or Attorney Alberts, that you—when I

say you, I mean Automotive or its attorneys or agents—would not prosecute Larson for any alleged perjury if Larson and Precision and Snap-On would enter into a settlement of the Larson-Zimmerman Interference?

A. Absolutely not a word.

Q. Was any request ever made at any of the conferences which you attended by anyone that you or anyone else on behalf of Automotive agreed not to prosecute Larson or any of his witnesses if Snap-On or Larson and Precision agreed to a settlement of the Larson-Zimmerman 1327 Interference?

A. Not a single request either expressed or implied.

Q. Now, what is the fact as to whether during any of these conferences which you attended any representation was ever made by anyone that Larson or Carlsen or any of the other witnesses who testified in the Larson-Zimmerman Interference had ever admitted perjury either to Mr. Alberts or Mr. Hobbs or Mr. Johnson or anyone else?

A. There was absolutely none and, if I may add, Mr. Smith, Mr. Fidler and I discussed this testimony on several occasions and I cautioned Mr. Fidler again and again to make no accusation, never to use the word perjury, because he did not have sufficient proof to establish anything of the sort; that it would be dangerous to do so; that from my past experience of over thirty years, when I had any contact with a situation where I suspected perjury, I always found it advisable not to make any accusations, and I knew of instances where accusations had been made and it was unfortunate.

1328 Q. When you say unfortunate, what do you mean?

A. Well, it was a reflection on responsible attorneys and could not be proved. I had gone through, if I may make this statement, a great deal of motor meter litigation. There were some, oh, fifteen, twenty suits filed in this vicinity; Mr. Charles Neave, of Fish, Richardson & Neave was the principal attorney. I was representing him in this district. And as I say, there had been a number of suits filed. There were a number of instances where there had been some counterfeiting; and I consulted with Mr. Dave Stansbury in connection with several of those cases. And I was well warned by Mr. Stansbury to be awfully careful not to make any accusation that I could not prove. I ran into one situation in Cleveland where there was an

accusation made as to fraudulent counterfeiting motor meters; and as I recall, it cost the motor meter considerable money because they were not counterfeited, they happened to be repair motor meters.

Q. Now, as an actual matter of fact, when did you first become aware that perjury had, in fact been committed in the Larson testimony, in the Larson-Zimmerman Interference?

A. I can answer that this way: I suspected, when 1329 Mr. Fidler told me the story back in 1940; I was fairly well convinced when Mr. Alberts in his Second Amended Petition, as I recall, charged that Automotive and its attorneys were guilty of compounding a felony, or guilty of accusing Larson of having perjured himself. Mr. Alberts did not allege in that petition that Larson had perjured himself. Later Mr. Alberts filed his Third Amended Petition, in which he asserted that Larson had perjured himself; and then I was more sure of it.

Mr. Oonis finally, after some months, filed an amended answer. He represented Larson in the suit; and he definitely charged that Larson had committed perjury. But I didn't know it, I was not sure of it until Mr. Larson testified before his Honor in this court, in March of this year.

Q. Let me just ask you this: When I asked you whether during any of these meetings there was any discussion or charges of perjury, did you in making your answer consider the fact that I was including in charges of perjury falsification of drawings or exhibits, and things of that kind, too?

A. Oh, yes. I never discussed any of that with Mr. Alberts, Mr. Fidler, or Mr. Hobbs; and there was no 1330 discussion of any of that in any of the conferences which I attended.

Q. Well, there has been testimony here with reference to \$500 being paid over to Mr. Thomasma for certain stock which he owned in Precision, in connection with this settlement, are you able to testify as to what that deal was, and how it came about?

A. You mean how it happened that the \$500 got into the contract?

Q. Yes.

A. The situation there was that Mr. Hobbs in his original suggestion to Mr. Fidler proposed that Precision pay

a royalty. Mr. Fidler then proposed a ten per cent royalty. Mr. Hobbs advised us that Precision would be unable to pay any royalty. And during these conferences we had with Mr. Hobbs, it was a matter of trying to work out some consideration for the license which Automotive was giving to Precision with respect to these 6,000 wrenches, and also with respect to the release which Automotive was giving to Precision.

Because we had in mind, as had Mr. Hobbs, that Thomasma had been our employee; and while our employee, and with the knowledge of Larson, Thomasma had established or helped establish the Precision Company.

And we felt that there was a cause of action against Precision.

In trying to work out what that consideration would be, we asked for this \$500, and we asked for the Larson Application, which had some claims to a feature which was not involved in the Interference and which was not the invention of Zimmerman.

In that connection, Mr. Smith, I would like to state that I would want to correct a wrong impression which I may have given the court when I was discussing, a week ago last Monday, I think, these contracts. I read that part of the transcript—as I recall, the Court asked me if there was a further loss; and I said yes. And what I meant, of course, was that there happened to be a continuing royalty per wrench; but the consideration was the matter which I have just stated.

Q: Do you know anything about the purchase of this Thomasma stock?

A: I knew it was purchased; as I recall, I spoke to Mr. Thomasma about it, and I asked Mr. Thomasma if he would take \$500; and he said yes.

Q: At whose request did you ask Thomasma if he would take \$500?

1332 A: Well, that was one of the conditions of settlement we had with Mr. Hobbs early in the correspondence, as I think an exhibit shows; Mr. Hobbs said that the proposal was conditioned on receiving Thomasma's stock, and we told him, Mr. Hobbs, that we would use our best endeavor to accomplish that end.

Mr. Smith: That is all.

Cross-Examination by Mr. Freeman.

Q: Mr. Lindsey, will you kindly repeat the oath that was administered to you yesterday afternoon by Judge Igoo, just prior to the time you took the stand?

A: I don't think I could repeat that oath word for word; I have heard it many times. I said I would tell the truth, the whole truth, and nothing but the truth, so help me God.

Q: And that truth includes the word "the whole truth", does it not?

A: Oh, yes.

Q: Now, tell me whether you mean to convey to Snap-On and to its attorneys anything different than what the words "the whole truth" meant to you yesterday, 1333 when you wrote to Snap-On; rather, to Mr. Alberts, with a copy that you asked that he send to Snap-On on December 19, 1940?

A: I have already explained what I meant, very definitely. I do not quite get your question, Mr. Freeman.

Q: Did the words "the whole truth" as used in your letter of December 19, 1940, mean anything different to you then than the words "the whole truth" as used by his Honor, Judge Igoo yesterday afternoon, when the oath was administered to you?

A: No.

Q: And you know that when you do not tell "the whole truth" that that in effect is perjury?

A: No.

Q: When under oath?

A: No, I don't know that.

Q: In other words, you could sit on the stand and not tell the whole truth, and not falsify or commit perjury?

A: That is right; I could be mistaken in my testimony, Mr. Freeman; it would not be the truth, but I would still be mistaken. All I take is an oath to tell the truth to the best of my recollection. It may not be accurate. I do not see what you are driving at, Mr. Freeman.

1334 Q: I am just trying to find out what you intended to convey to Mr. Alberts, as counsel for Snap-On, and what you intended to convey to Snap-On Corporation when you in your letter of December 19th, Defendants' Exhibit 68, said, "You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth."

A. I was trying to convey to Mr. Alberts and Mr. Johnson of Snap-On that they had heard Thomasma's story, that I suspected it was not true, and that furthermore I suspected that they found it was not true.

Q. You never used the word suspect anywhere throughout your letter, did you?

A. You asked me what I wanted to convey.

Q. And I am now asking you whether you used the word suspect anywhere through your letter.

A. The letter speaks for itself; certainly not.

Q. Will you please answer my question?

A. I am answering your question.

Q. And I gathered this morning that you were trying to smoke Alberts out; is that correct?

A. I certainly was.

Q. And you tried to smoke him out by charging 1335 that the testimony taken on behalf of Larson was not the whole truth; is that correct?

A. No.

Q. You did not intend that portion of the letter to do any of the smoking; is that correct?

A. Yes.

Q. Now will you tell me whether you intended a portion of that letter, that portion which had to do with not the whole truth, to help in smoking Alberts out?

A. Yes, I intended it for that purpose; yes.

Q. And you know that when you refer to testimony as not being the whole truth, that that in effect is saying that perjury has been committed?

A. I did not say there, Mr. Freeman, that that testimony was not the whole truth. You missed a sentence; you will have to read the whole sentence. I cannot answer the question, because I didn't say that.

Q. You emphasized the words "not the whole truth" by using just ahead of them the words "to put it mildly."

A. No.

Q. What did you say, then?

A. I said in this letter, "You must recognize," is what I said. I didn't say it was not the whole truth.

1336 Q. Whom did you want to recognize the fact that the Larson testimony was not the whole truth; whom did you want to get that information to?

A. I hoped that they would recognize it after they had talked to Larson; and I suspected they had.

Q. Whom do you mean by they?

A. Oh, I suspected that Mr. Alberts and Mr. Johnson had talked to Larson; I didn't know, I suspected it.

Q. You wanted your letter to have its effect upon Mr. Alberts, did you not?

A. And Mr. Johnson; yes.

Q. And that is why you took the extra precaution of sending a copy of your letter to Mr. Alberts, so that he in turn could send it on to his client, Mr. Johnson of Snap-On?

A. Yes; and the further reason that I wished them to recognize their obligation, in having this testimony transcribed; and not delay any longer; that Mr. Alberts, if he wished to withdraw, should promptly appoint an attorney who, he knew, would act as Larson's attorney. That was the main purpose of that letter, Mr. Freeman.

Q. And you took the extra precaution of signing that second copy of the letter, so that Snap-On would have 1337 your letter direct?

A. Oh, yes.

Q. Instead of making a typewritten copy, without your signature thereon?

A. Yes; I wanted Mr. Johnson to know our position; because at that time I suspected—

Q. Rather strongly suspected?

A. Mr. Fidler suspected; I may say this—

Q. Well, tell me what you suspected; you wrote the letter, and you signed it.

A. I suspected that Mr. Johnson and Mr. Alberts was back of this whole perjury story; if it existed, and wanted Mr. Johnson to know our position with respect to Mr. Alberts' responsibility as an attorney of record in the Patent Office.

Q. You have made, or at least I have gathered from some of the remarks you have made yesterday afternoon and again this morning, that there was somebody back of us other than Larson; or I guess you said other than a layman; do you have any idea, or do you like to say whom you have in mind as being back of the Larson story?

A. It is rather a regretful thing when one attorney has to testify against another one in court; and I dislike 1338 doing this very much—

Q. Just as much as I dislike cross-examining you.

A. I have been driven to it, and I will answer the ques-

tion, also I am rather reluctant to do so; you want my answer.

Q. Yes; let the ax fall where it may, and the chips fly.

A. It is inconceivable to me then, and it is inconceivable to me now, and I do not believe that Larson was the one that got all of these witnesses and concocted this story, got these invoices, had the drawing predated, made up that beautiful model,—will you please hold that up to the Court—I do not believe, did not believe then and do not believe now, that Mr. Alberts merely told Mr. Larson to prepare the board and put the model on, and that Larson did it in that fashion.

I have been practicing patent law for over thirty years. I have seen beautiful exhibits, and this is what I call a beautiful exhibit. And I have seen Mr. Larson in the court room, I saw him testify; and I would be very dubious whether he had the mental capacity to build up that story alone. That is my answer; I hate to give it, but that is it.

Q. All we want is—

1339 A. That is the truth.

Q. And did you get that information from Mr. Fidler, or is that your own information?

A. What information?

Q. As to what you just testified to with respect to the models?

A. Oh, yes; Mr. Fidler told me about those models.

Q. And he had the same suspicion that you have?

A. Well, that is what he told me.

Q. And you both agreed on that?

A. Oh, yes.

Q. And is that what you had in back of your mind when you said that you cannot shift your responsibility?

A. I was speaking primarily to Mr. Alberts, that he could not shift his responsibility to Mr. Hobbs. Isn't that what the letter says, Mr. Freeman?

Q. Yes; you have a copy of it. I am not trying to read portions—

A. That is all you read; now let us read it, Mr. Hobbs. Now, that is exactly what I meant.

Q. Now tell me what you wanted to convey to Mr. Johnson, and Snap On—and your letter was written with some dashes in it, so it is a little hard to take any one
1340 part of it without being accused of not reading it all; so I am going to read it all: "Mr. Johnson of Snap

On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed.” And I would like to have you tell me now what were these developments that were still to be revealed?

A. Those developments I hoped would be revealed. I had already said Mr. Johnson had been fully advised of the situation, at least as we knew it. And the rest of that sentence manifestly means that I hoped there would be further developments, and I believed that there would be.

That is one of the reasons that we had called Mrs. Larson and Mrs. Carlson as witnesses. We were still having the investigators investigate, even after Thomasma had given his statement. In fact, the expense has about doubled after that, showing that we certainly—

Q. When you say expense, are you referring to the pre-text expense, or are you referring to service charge of the investigator being doubled?

A. Oh, I think both. I forget. I would be glad to look at it. As I remember, — You have been talking about this \$4700; as I recall, about half of that was spent after

1341 Thomasma had given his statement. And I think I figured up that almost \$2000 was spent in trying to get the truth of Thomasma's story, whom we doubted, from the time of this meeting when he told Mr. Johnson and Mr. Alberts his story until the contracts were exchanged, Mr. Freeman.

Q. In your letter wherein you say—again, you refer to the letter—“Johnson of Sign-On has been fully advised of the situation so far as it has developed,” and I take it you are referring now to the information that was conveyed to Mr. Johnson at your office on November 28, 1940; is that correct?

A. I think that is true; together with any other information that he may have obtained, that I didn't know.

Q. And at the meeting of November 28, 1940, it was brought out that Thomasma had been connected with AMMCO and also with Precision?

A. So Mr. Fidler told me; yes.

Q. And Fidler told you what was done in 1938; that was your testimony here this morning?

A. You mean with respect to Thomasma—

Q. To Thomasma's connection—

A. With Automotive?

Q. With Automotive, yes.

1342 A. Yes, I forget the date, but I think it was 1938.

Q. Yes, that was my memory of your testimony.

A. I don't know as I testified 1938.

Q. If Larson's testimony with respect to the development of his wrench was in 1934, if you knew that testimony to be true, then clearly there would have been no testimony of Thomasma's connection with either AMMCO or Precision as late as 1938?

A. The question is rather involved; I do not get that question.

Q. I will ask the question over again: Larson, so you were informed, testified that he made his wrench in 1934 and 1935?

A. Yes, in general about some of his activities in 1934; I forget whether he testified that he made a wrench that year; I wouldn't say, Mr. Freeman.

Q. And if that were true, whatever connection there was between the Precision, Thomasma, and AMMCO in 1938, would have no bearing upon the situation; is that correct?

A. Oh, I would say that is correct; yes.

Q. And you testified this morning that the Thomasma situation; that is, his connection with AMMCO and Precision—now, if there was that connection or liability 1943 that would attach to Snap-On or to Precision, then you must have known that Larson's testimony was false?

A. Not at all. That is just argument. I didn't know it was false; I never knew it was false absolutely until Mr. Larson testified in the court room. I do not follow your argument at all.

Q. Now, I have heard considerable about the reporter; you heard the reporter testify yesterday that he got the transcript out as fast as he could, that he was ill after the taking of the testimony stenographically?

A. I forget whether he said he was ill; I remember he said he did it as well as he could, yes.

Q. And do you recall that he testified here yesterday that all he omitted were the cuss words used by one of the witnesses?

A. Yes, I heard that.

Q. Is that what you meant when you said part of the transcript is not reported correctly or fully?

A. That is my impression; that is my recollection, yes.

Q. In other words, that was the accusation that you were making against Mr. Alberts in that letter of December 19th?

A. I was not making any accusation against Mr. 1344 Alberts in that regard; I simply made a statement.

Let us not read anything into that letter that is not in there, Mr. Freeman.

Q. I am not going to. You made a statement, "Part of the transcript is not reported correctly or fully?"

A. That is right; and both were true.

Q. It was the omission of the ~~miss~~ words of one witness that prompted this statement?

A. I forget whether it was one witness or not; I know that Mr. Fidler told me that part of the testimony was full of profanity, and that he wanted it in there because he wanted to show the character of the witness who was testifying.

Q. Did your office ever ask the reporter to include the profanity in the transcript?

A. As I recall Mr. Fidler told me that he complained about it.

Q. Did he ever complain to Mr. Alberts about it?

A. As I recall, I think he did; I won't be sure. That is my recollection.

Q. He did not do it by letter?

A. As far as I know, I have not seen a letter.

Q. And you have had an opportunity to go through 1345 your correspondence?

A. Oh, I have not gone through all the correspondence; we submitted to you a file of correspondence that thick. (Indicating)

Q. I am frank to confess, I didn't find that.

A. Mr. Fidler went through that; and if he found the letter was of no consequence—

Q. Do you think Harry Alberts was responsible for giving any directions to the court reporter to omit the profanity?

A. My answer, I am sorry to make it, I don't know.

Q. It wasn't anything out of the ordinary for Mr. Alberts, who was taking testimony in behalf of his client in the interference case, to employ a reporter, was it; that is usual, isn't it?

A. Not at all; but when you have a reporter you have

the responsibility of getting the transcript out too, Mr. Freeman. I never knew of an attorney who tried to dodge that responsibility.

Q. Now just tell me what Mr. Alberts did, and I am willing you tell me what Mr. Fidler told you, even though it is hearsay.

A. About what?

Q. About Mr. Alberts keeping the reporter from 1346 transcribing the evidence.

A. I don't think Mr. Fidler ever told me Mr. Alberts kept the reporter from transcribing the evidence; if I have given that impression, I certainly did not intend to.

Q. Did you have any one from your office gibe the reporter with respect to getting the notes transcribed?

A. No, I did not personally threaten; I know Mr. Fidler did not. I don't know—

Q. Didn't your Mr. Smith, of your office, call on the reporter several times after the taking of the testimony; that is, somewhere between November 4, 1940 and the time there was a halt called to the transcribing of the testimony by Mr. Hobbs, on or about December 2, 1940?

A. I presume you are referring to Mr. Schmid?

Q. The gentleman from your office.

A. I just want to get it clear; because Mr. Smith is one of my partners; and Mr. Schmid was an office boy at that time. As to that, I couldn't say. You would have to ask Mr. Fidler.

Q. Now tell me why either Mr. Alberts or Mr. Johnson should realize, and I am now quoting from your letter, 1347 "that you are holding up the issuance of the Zimmerman patent without the slightest justification?"

A. Well, in the first place, it suggested a concession of priority; true, coupled with conditions; they were haggling for a settlement.

In the second place, Mr. Alberts was attorney of record; and as soon as we served notice on him, he tried to appoint another attorney who, he knew, would not act.

In the third place, I got the definite impression from conferences which we had had before that Larson was willing to settle and that Mr. Johnson and Mr. Alberts were holding up anything that Larson wished to do.

And in the fourth place, I strongly suspected, and my

suspicious have since been confirmed, that Mr. Alberts and Mr. Johnson had talked to Larson, and that Larson had confessed. And that is the reason for that sentence.

Q. Well, then you knew at the time that you wrote this letter that Larson had confessed perjury?

A. Oh, no, not at all, Mr. Freeman.

Q. Well, I am asking you upon what you based the information contained in this letter, not what you now know.

A. Sure, suspicion; it was a very suspicious situation.

1348 Q. You agree with me, as patent counsel, that if Larson's testimony were correct, notwithstanding your suspicions, he had the right to have his day in court in the Patent Office?

A. Oh, yes; but I would not admit, if I get your question, that at the time that Mr. Larson and Mr. Carlsen confessed to Mr. Alberts and Mr. Johnson, that there was any further justification for any proceedings in the Patent Office, or any haggling for a deal such as Mr. Alberts and Mr. Johnson made.

When they found that there was perjury, and that that story was all faked, there was a duty on the shoulders of Mr. Alberts to abandon the contest immediately, and to advise Mr. Larson to do so, and his client Snap-On; and Mr. Johnson, instead of trying to saw off those clients on to Mr. Hobbs. That was a definite duty.

Q. Are you defending Mr. Hobbs here?

A. I am not defending Mr. Hobbs, no; he is capable of defending himself. You asked me a question.

Q. You keep on saying about wishing this off on to Mr. Hobbs.

A. Didn't he turn over the negotiation settlement to Mr. Hobbs?

1349 Q. Mr. Hobbs took them voluntarily, did he not?

A. Yes, according to his story he didn't know there was perjury. Now, there is no use in Mr. Freeman and I arguing this case now, your Honor, please. I have no objection to answering any question.

Q. Now, would you like to tell me with respect to this "slightest justification?" I think that is important, and I haven't got a good answer.

A. Maybe you do not like the answer, but it is the best I can give; I have nothing to add and nothing to subtract. It satisfies me, Mr. Freeman.

Q. In other words, you were willing definitely to go on record on December 19, 1940, that Mr. Alberts and Mr. Johnson of Snap-On were holding up the issuance of the Zimmerman patent without the slightest justification; and you are willing to go on record, or make that statement based solely on your suspicion?

A. No, I have already given four reasons.

Q. I am asking you what you knew then, not what you know now.

A. You will have to refer back to my answer; you are taking one, you will have to take all four.

1350 Q. Would you mind giving me those four reasons over again, even though it may be repetition?

A. Well, it is pretty hard to get them in the same order.

Q. Well, any order.

Mr. Smith: I think the reasons have been given, if your Honor please.

Mr. Freeman: I would like to get them, your Honor.

The Court: Let us get them, to save time.

The Witness: A. In the first place, as I said, as I recall, I was convinced, or rather believed that Mr. Larson was willing to settle, and that Mr. Johnson and Mr. Alberts were blocking that move. There was a suggestion which Mr. Alberts made to us in his letter of December 17th, in which he suggested a concession of priority, that he was haggling for attached terms.

Mr. Freeman: Q. Is that the second—

A. That is the 17th.

Q. No, but is that the second reason; or is that still part of the first one?

A. Well, I wouldn't want to repeat those reasons—that is the second reason, yes; and the fact that they were willing to concede the priority, even under terms—
1351 which to me seemed to be extravagant; I felt that they had been informed by Larson of the true story which we suspected.

Next, Mr. Alberts, as soon as we served a notice of taking depositions, attempted to appoint an attorney in his stead, when he knew he would not act, that Mr. Hobbs would not act. And to me that was a deliberate attempt to stall and to delay matters. They were afraid to face the music. At least, that was what his action implied to me.

Now, I may have got the four reasons in, there rather together. I am through.

Q. Well, that is three of them, as I have it.

A. Well, the fourth may be in there, I think, about my suspicion, so willing to concede priority.

Q. Isn't it true, Mr. Lindsey, that your temper got the best of you when negotiations had fallen through, on about December 18th or 19th; and you then wrote that letter of December 19th?

A. No, that is not true. Because, if I may answer—

Q. You were calm, cool and collected when you wrote that letter?

A. If I may answer the questions,—

1352 Q. Go right ahead.

A. I consider that negotiations had fallen through when I received Mr. Alberts' letter of—

Q. On the morning of December 18th?

A. If I may finish,—of December 17th, 1940, Defendants' Exhibit 73, in which he made certain demands and then served notice on us in no indefinite terms. I read from his letter: "Without concessions herein made by Snap-On Tools Corporation Larson and his nominee, could not effect a settlement with Automotive Maintenance Machinery Company, and this proposal—" which Mr. Alberts made—"has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation, irrespective of the outcome of the controversy."

And when I received that letter, so far as I was concerned, negotiations were through; and it did not make me mad at all. We were perfectly willing to go ahead with the testimony, and that is the reason we served notice on Mr. Alberts.

Q. And when you say you were perfectly willing to go ahead with your testimony, one of your witnesses
1353 was going to be the wife of Kenneth R. Larson; correct?

A. Yes, that is correct.

Q. And she, of course, would know nothing at all about Zimmerman dates, your client's dates?

A. Oh, no; we were going to try and find out whether Larson's story was true.

Q. You were going to prove Larson's story wrong?

A. We were going to try to, Mr. Freeman; that is all we could do; we hoped to.

Q. And you also subpoenaed the wife of Mr. Carlsen; correct?

A. Yes.

Q. And she, like Mrs. Larson, would know nothing about your client's dates?

A. That is right, I think.

Q. And again, you were going to endeavor to prove that Larson's story was wrong—

A. We were trying to find a breach in this perfect story, which nine witnesses had told, supported by documentary evidence and models; yes.

Q. And you wrote Mr. Alberts when you sent your notice of taking testimony that your first witness would be the court reporter, Mr. Raftery; is that correct?

1354 A. That is correct. We wanted to get that untranscribed testimony.

Q. You were going to have him transcribe the testimony?

A. We expected him to read his notes, yes; we had not had it. That is right.

Q. And you expected him to do that in your office on December 23, 1940, when the return of the subpoena was made; correct?

A. I would say, correct.

Q. And you had, I think, on that same notice of taking testimony Mr. Schmid from your office?

A. Yes.

Q. I am now asking you whether he was going to testify with respect to the Zimmerman dates, or was he going to testify with respect to Larson?

A. I know he was not going to testify—I am sure he was not going to testify with respect to Zimmerman dates. Frankly, Mr. Freeman, I do not recall just why we included Mr. Schmid in that notice. I am quite sure Mr. Fidler had a reason, and suggested his name; but I cannot give the answer, I am sorry.

Q. And the fifth and last witness on that notice 1355 was Mr. Raymond Fidler; and do you know whether he was going to testify with respect to the Zimmerman activities, or was he going to testify with respect to Larson?

A. As I recall, Mr. Fidler was certainly going to testify as to Zimmerman activities; that is my recollection. He

had followed the development and had prepared the application, the Zimmerman Application.

Q. Do you want to state now that you knew that Mr. Fidler was going to testify with respect to Zimmerman dates?

A. Well, that is my best recollection. Now, he may have wanted to testify about something else, in Thomasma's connection with Automotive.

Q. You wouldn't want to say?

A. As I say, that is my recollection; I wouldn't say positively, but that is my recollection; and I think it is correct.

Q. And do you recall that in your letter, wherein you said on December 18th that Mr. Raftery would be the first witness, that you concluded that letter as follows, and I read: "For your information, we also advise that at the conclusion of the taking of the testimony here we will proceed to Kenosha, Wisconsin to take several depositions, that we will give you notice of these depositions 1356 later." Now, at Kenosha, Wisconsin, do you recall who were going to be the possible witnesses there.

A. No, I do not recall the names of them, Mr. Freeman. As I recall, we had some information that Snap-On knew that Thomasma was connected with Precision. There had been several telephone calls, Mr. Fidler advised me; I think there was one or two calls of an employee or two of Snap-On; and they readily advised the persons that telephoned that Mr. Thomasma was connected with Precision; and as I recall at this time, that was the testimony which we intended to take. Of course, if it led any place, we would probably have taken Mr. Johnson's too.

1357 Q. Well, I am not interested in what it might lead to. I want to know what you were going to do at Kenosha when you wrote the letter of December 18th, 1940?

A. I have answered that to the best of my ability at this time.

Q. And that likewise was testimony directed to refuting or tearing down Mr. Larson's story, as distinguished from putting in evidence directly in behalf of the invention made by Zimmerman, is that correct?

A. Yes, except to prove, of course, that Snap-On had been using Automotive's wrench and had constructed and had sold many of these wrenches which Precision virtually

copied. I think that was another thing that Mr. Fidler hoped to prove. He was more familiar with the proofs than I was.

Q. You knew, did you not, that the sales relationship between Snap-On and Automotive started about 1936?

A. I probably did. I forget the date now. I knew that, Mr. Fidler told me, that this wrench had been designed by Zimmerman and had been sold by Automotive to Snap-On, but I wouldn't try to remember the dates because that was just a circumstance that entered into the picture and not so very directly.

1358 Q. Do you recall now, Mr. Lindsey, as to whether or not the sales relationship between Snap-On and Automotive was subsequent to the dates alleged by Larson in the Interference?

A. Do you mean the first commercial intercourse?

Q. The relationship with respect to torque wrenches, the subject matter here involved?

A. I don't know, and I don't remember whether I was ever told. I had nothing to do with the Automotive Company, except to talk to Mr. Wacker. I think this is one of the first things I ever got into for Mr. Wacker, and that wasn't until about December 9, 1940.

Q. Do you know why you were called in on December 9th, 1940 in the midst of negotiations that were then being carried on by Mr. Hobbs and Mr. Fidler?

A. Oh, I had met Mr. Wacker before and I think I had several, probably, brief conferences with him about his matters. I don't think I ever made a charge for any of them, and Mr. Fidler and I are very close together. We call each other in when we have a problem. That is a very usual thing. The same as I usually go into Mr. Frank Parker Davis' and solicit his cooperation, and he solicits my help, on the theory, I guess, that two heads are
1359 better than one.

Q. Isn't it true that when you entered this picture Mr. Hobbs had made a proposal to your client directing it to Mr. Fidler on December 6th, 1940?

A. Yes.

Q. —and at the same time Mr. Fidler had written to Mr. Hobbs on December 6th, 1940, apparently the letters having crossed rather than being in answer to each other, Mr. Fidler having written the letter following his conference with Mr. Hobbs and Mr. Haight at his home on December 2, 1940, is that correct?

A. Yes.

Q. So that there had been a proposal in your hands from Mr. Hobbs when you entered the picture?

A. Yes.

Q. Had that proposal ever been turned down or any counter proposal ever been made to Mr. Hobbs when you entered the picture and called Mr. Hobbs on December 11th, 1940 when you told him that he would have to take it?

A. Yes, my recollection is that there was—

Q. I would like to have you give me anything that you have here showing that there had been a turn down or a counter proposal made in behalf of AMMCO to Mr. 1360 Hobbs between his letter of December 6th and when you called him and gave him the ultimatum, so to speak.

A. Do you mean documentary?

Q. Any kind.

A. I don't think there is any, documentary. I know Mr. Fidler told me that he had called Mr. Hobbs and apprised Mr. Hobbs that the royalty that he had suggested was not satisfactory to Wacker, and Wacker wanted 10 per cent. I know that.

Q. That was the letter which was in response to the meeting between Hobbs, Haight and Fidler of December 2, 1940 and—

A. No.

Q. —and I predicate my question—

A. No. Let me answer now.

Q. All right.

A. That is wrong. It is true Mr. Fidler wrote that Mr. Hobbs' letter still included the 5 per cent, 3 per cent—

Q. That is right.

A. So you see I am wrong, and Mr. Fidler called Mr. Hobbs about that letter.

Q. Was there any word of testimony from Mr. 1361 Hobbs, as you can recall, covering the period between the time he wrote you on December 6th and Mr. Fidler wrote him on December 6th, keeping in mind that those letters were not in answer to each other, and your telephone call where you gave him the ultimatum?

A. Well, I didn't give him an ultimatum. I am going to challenge that.

Q. When he hung up the telephone on you.

A. All right.

Mr. Smith: Just a minute, Mr. Freeman. Let the witness finish his answers, please.

The Witness: If you will read that question.

(The last question was read by the Reporter.)

The Witness: I don't recall all of Mr. Hobbs' testimony, and I don't remember anything that was said as to what transpired between those dates. There may be, but I don't recall it.

Q. Tell me what brought about the proposal that you dictated in your office, as you testified, after Mr. Hobbs hung up the telephone on you on December 11th, 1940?

A. I dictated that, and then after I dictated it I cooled off and called Mr. Hobbs.

1362 Q. Was Mr. Wacker in your office or Mr. Fidler's office when you telephoned Mr. Hobbs?

A. No.

Q. You have observed Defendants' Exhibit No. 20, which was taken from the files of Automotive, dated December 11th, 1940, wherein there appears in the handwriting of Mr. Wacker the following:

"Tentative settlement submitted by Fidler and Lindsey to Hobbs."

A. Yes, I recall that very well.

Q. Do you recall that?

A. Yes, very well.

Q. And Mr. Wacker was in your office on December 11th, 1940, as you have testified?

A. He wasn't. Oh, on December 11th?

Q. Yes.

A. No, sir.

Q. Yes.

A. Yes. On December 11th I talked to Mr. — I thought you were saying the 9th.

Q. No.

A. — to Mr. Wacker, but not in my office.

Q. Now, what was the necessity of dictating this 1363 memorandum if you now say that it was never given to Mr. Hobbs, and I now quote from Defendants' Exhibit No. 20:

"Time for acceptance, or rejection of either proposition expires five p. m., Thursday, December 12th, 1940."

A. Oh, I remember that. As I already testified, Mr. Freeman, I was quite angry when Mr. Hobbs hung up in

my ear. I dictated that memorandum, and then I read it and decided I wouldn't submit it. I cooled off. Now, I don't know what answer you want.

Q. All I want is the facts.

A. If that doesn't answer your question, I will be glad to answer any further question.

Q. Well, then as long as Defendants' Exhibit No. 20 was prepared after your telephone call to Mr. Hobbs and, as you now testify, it was never submitted to Mr. Hobbs, will you tell us what proposal you were going to make to Mr. Hobbs when you did call him on December 11th, 1940, at which time he hung up?

A. As I recall, Mr. Fidler prepared some kind of a rough draft of a contract. It was not submitted to Mr.

Hobbs either that day or the 12th and, as I recall, 1364 Mr. Fidler and I were endeavoring to find out some way out to get some consideration from Precision to Wacker with respect to this license, and I think that included the Larson application in the proposal at that time. I haven't seen that instrument. I don't even know whether it is in existence, as I recall, now. And when Mr. Hobbs hung up in my ear, why, I was trying to follow somewhat his original proposition, except to boost the royalty from 3 per cent to 10, and I believe I put in something about the acknowledgment of validity of the patents.

Q. And likewise you wanted royalty of 10 per cent on everything that had been sold from the date of the inception of the Precision business up to the time of the agreement?

A. I don't recall that we ever asked for that, Mr. Freeman. I may say that we never asked for the difference in price between the wrenches either.

Q. Are you now saying that you never asked for royalty upon those items which were sold by Precision from the inception of the Precision business up to the time of the settlement?

A. That is my recollection. The correspondence 1365 might show otherwise, but I don't recall it. Have you in mind any particular—

Q. You might look at the letter from Mr. Fidler to Mr. Hobbs of December 6th, 1940.

A. You asked me if I had. I didn't enter into this picture until December 9th, Mr. Freeman.

Q. Well, you had that in mind, did you not, when you

prepared your memorandum of Plaintiff's Exhibit No. 59, wherein you stated:

"Item 2: A royalty of 10 per cent of Snap-On's net selling prices of wrenches to trade on wrenches heretofore sold—"

A. Oh, yes.

Q. —and hereafter to be sold on orders already taken.

A. That isn't what you asked me. I had it in mind, but then I never submitted that proposition. I told you I was angry when I prepared it and I never submitted it. I ditched it, so to speak, if I may use the vernacular.

Q. You ditched it and sent a copy of it or gave a copy of it to your client Automotive?

A. No, sir. I don't know how Mr. Wacker got that copy. I don't recall ever giving him—

1366 Q. And you don't—

A. If I may finish my answer.

Q. Yes.

A. I don't recall ever having handed Mr. Wacker a copy of that memorandum or having discussed it with him.

Q. And you don't recall how Mr. Wacker got the information that he placed upon the memorandum in his own handwriting in longhand?

A. No. I know I didn't give it to him.

Q. The memorandum was preserved in your office files?

A. The same as we have preserved everything, yes. Of course, I didn't keep those files, you understand. Those are all Mr. Fidler's files.

Q. What was the counter proposal then to Mr. Hobbs in reply to his letter of December 6th?

A. Well, I don't have that so very clearly in mind but, as I recall, Mr. Fidler told me that he called Mr. Hobbs and suggested either a modification of the royalty, or some other way to take care of this monetary royalty per wrench. I am frank to confess I don't remember the exact terms. There was considerable negotiation covering a considerable period of time, Mr. Freeman, and, as I re-

member, I have never seen that rough draft memo-
1367 randum and I don't know whether it is in existence and I wouldn't say for sure that there was a rough memorandum.

Q. When the next order was your meeting with Mr. Hobbs at the Union League Club on December 12th?

A. Yes; that is correct.

Q. And that was following a telephone conversation between you and Mr. Hobbs after the abrupt telephone conversation?

A. That is correct.

Q. Then following that conference there was submitted to Mr. Hobbs the draft of the agreement that we now have in evidence as Defendant's Exhibit No. 14, is that correct?

A. Is that the joint—you don't need to show it to me.

The joint.

Q. The joint agreement—

A. Yes.

Q. —where Precision and Snap On were parties on one side?

A. As I recall that was submitted to both Mr. Alberts and Mr. Hobbs on December 13th.

Q. December 13th?

A. Yes.

Q. And then you had a conference in Mr. Hobbs' office on December 14th where Mr. Alberts was present, Mr. Hobbs was present, in behalf of Precision?

A. The 14th? I don't recall that conference, Mr. Freeman.

Q. Well, perhaps that was Friday, December 13th.

A. That is the one I have already referred to. Yes.

Q. And you then left with Mr. Alberts a copy of that agreement and you likewise left with Mr. Hobbs a copy of that agreement, is that correct?

A. That is correct, as I recall.

Q. When you gave that copy to Mr. Alberts and likewise a copy to Mr. Hobbs did you put any time limit, or how soon they were to accept or reject or make a counter proposal in reply to that draft?

A. I don't recall that we did. I think we told him we would like to have it considered promptly, but I don't think there was any time limit at that time.

Q. Mr. Alberts received that on Friday, December 13th, is that correct, Exhibit No. 14?

A. Yes; that is correct.

Q. And then we had Saturday, the 14th, Sunday, the 15th, and he wrote you on Tuesday, the 17th, is that correct?

Testimony of Harry W. Lindson, Jr.

1369 A. That is correct.

Q. You don't consider that any dilly-dallying on Mr. Alberts' part, do you?

A. Not at all.

Q. Because you know that he had to contact his people at Kenosha, Wisconsin?

A. Oh, certainly, I admit that it was prompt.

Q. And Mr. Alberts then sent you on December 17th a letter outlining his views?

A. Correct.

Q. Now, upon receipt of that letter was there anything that justified the comment that Mr. Alberts and Snap-On were going to play dog in the manger?

A. That letter, coupled with Mr. Alberts' attempt to appoint Mr. Hobbs—

Q. I am talking about the negotiations. You are trying to make a settlement here as between two companies, and we don't build all the things that happened years before. I am talking about the letter. We are in the midst of these negotiations.

A. What was your question, Mr. Freeman?

Q. Was there anything in the letter which was sent to you on December 17th that justified your statement 1370 that it looked like Mr. Alberts and Snap-On were going to play dog in the manger?

A. Yes, that letter, taken in connection with the other letter, I cannot separate the two. They go together.

Q. That is, you took that letter and built up the fact that the Reporter had not yet transcribed the notes as promptly as he should—

A. I didn't build up anything. The letter speaks for itself. Mr. Alberts sent me his letter of December 17th in which he was proposing a new proposition, and he spent two pages in which he talked about Larson not being the inventor of another application and then along comes his letter to Mr. Hobbs where he serves notice—

Q. Now—

A. If I may just answer the question.

Q. Pardon me, I am sorry. I want to move along.

A. You have asked me to answer. Where he served notice on Mr. Hobbs that he wanted security, he wouldn't release the Larson application. I say altogether that indicated to me that Mr. Johnson and Mr. Alberts were playing dog in the manger.

Q. This dog in the manger situation arose on December 18th when you received Mr. Alberts' letter of December 13th, did it not?

A. Oh, taken in connection with his attempt to appoint Mr. Hobbs.

Q. Well, you didn't receive Mr. Alberts' letter to Mr. Hobbs, of Haight, Goldstein and Hobbs, until December 19th?

A. That is correct, I think, but I did receive--well, I think that is correct.

Q. So that at the time you talked to Mr. Fidler after receipt of the letter of December 17th, 1940 you had not yet received Mr. Alberts' letter of December 18th to Mr. Hobbs, is that correct?

A. No, no, that is correct. Of course, this letter alone, Mr. Freeman, gave me the impression that Mr. Johnson and Mr. Alberts were kind of playing horse, so to speak. Some of this dissertation in here seemed rather strange to me, where Mr. Alberts says that the Larson application was not filed in the name of the true inventor, in effect, because they didn't think that was the smart thing to do. That was about the substance of his letter.

Q. Well, he filed a joint invention and it should have been a sole invention?

1372 A. No, he filed a sole invention.

Q. And it should have been a joint?

A. Just a minute, if I may point out.

Q. All right.

A. Mr. Alberts says in his letter:

"Because Snap-On Tools Corporation did not want to become involved in a joint invention with Larson at that time in view of the provisions of the agreement of September 28th, 1938 for reversion of all patent applications to Larson or his nominee, Precision Instrument Manufacturing Company, it was decided at that time not to file a joint application."

It was a mere matter of expediency when Mr. Alberts decided who was the inventor, as I read his letter. That is what I am referring to. And then on the next page he was asking Automotive to acknowledge validity of a patent that would issue on an application, a joint application that hadn't even been filed, which seemed perfectly absurd to me.

Q. Do you mean it was absurd to ask for recognition of claims that were not yet in being?

A. No, that wasn't the point.

1373 Q. Oh, the question is whether it was filed or not filed?

A. No, that wasn't the point.

Q. Go ahead and tell me what the point is.

A. The point was, there was no reason for Wacker or Automotive acknowledging validity of any of Larson's applications. That is the point. It was absurd on its face to me.

Q. I might inject a question. I will let you answer. Was it just as absurd for Mr. Wacker to ask Precision and Snap-On to recognize the validity of claims of the Larson application which were not involved in the Interference?

A. Certainly.

Q. It was just as absurd?

A. No, it was perfectly sound.

Q. That is because the request was made by Wacker?

A. Is that being facetious?

Q. A little bit.

A. Well, I don't answer the question, may your Honor please. If you want an answer I will be glad to answer any questions.

Q. I would like, upon second thought, to know why there was the demand or insistence that Snap-On and Precision recognize the validity of claims which were not involved in the Interference having to do with another subject matter and not only those claims, but claims which might be written which were not then in being?

A. There was nothing unusual at all about that, Mr. Freeman, and certainly not in this situation, as I understand it and as it has been related to me by Mr. Fidler. There was common subject matter between the applications in Interference. It is a very common thing to have a concession of priority when a settlement is made, to have the party conceding priority acknowledge validity of any claims that may issue in that patent. So far as this other Larson patent is concerned, I understand from Mr. Fidler that there was some kind of an attempt to add claims. I don't know just what the situation is. I have never read those claims before, and that Automotive may have had

an application which could have gotten into Interference. That is the best answer I can give because Mr. Fidler was more familiar with that situation than I was. I never examined these applications. I was taking Mr. Fidler's word for it, and that is what I recollect Mr. Fidler told me on that situation.

Q. Well, isn't it true, so that we get the sequence of events, that after you received Mr. Alberts' letter of December 17th you then set about to prepare the notice of taking testimony and had the wives of Larson and Carlsen served by the marshal or other bailiff?

A. That is right, because he had served notice on us to take it or go ahead, and so we were going ahead.

Q. That was the letter of December 17th of Mr. Alberts which you said was the serving of notice upon you?

A. Correct.

Q. And then when you received Mr. Alberts' letter of December 18th, which was a copy of the letter that he had written to Mr. Hobbs with respect to the power of attorney, you then sat down and wrote your letter of December 19th, Defendants' Exhibit No. 68, is that correct?

A. Yes, and in view of his withdrawing and trying to appoint Mr. Hobbs as attorney—

Q. You had already decided to take testimony, had you not?

A. Oh, yes.

1376 Q. And you had already accepted Mr. Alberts' letter of December 17th as your notice to go ahead?

A. Oh, yes.

Q. Was there any need for writing a letter calling attention on December 19th to the testimony of Larson as not being the whole truth?

A. I have already explained that. I can add nothing to it or subtract anything from it.

Q. You had already decided to go ahead with your Interference?

A. Why, of course, I had, and I wanted Mr. Alberts to appoint an attorney whom we could serve the notice on.

Q. Now, there has been so much said about appointing an attorney upon whom you might serve. You could have served Larson, could you not?

A. The Patent Office rules provide that notice must be served upon the attorney and if no attorney then on the applicant. I am just following the rules.

Q. Much has been said here about Mr. Alberts appointing an associate attorney. You knew and know now that Mr. Larson could have appointed an attorney any time he wanted to and Mr. Alberts' power of attorney would have been automatically revoked by the Patent Office?

1377 A. That is true, and I know now that Mr. Alberts wrote that he was doing what he could to stiffen Mr. Larson's position so that he wouldn't leave Snap-On holding the bag, contract or no contract, which is about the words that Mr. Alberts used.

Q. Was there anything wrong in that?

A. Why, of course there was, Mr. Freeman, if you are asking me. When Mr. Alberts knew that there was perjury committed and was stiffening his back and preventing him from giving a concession of priority, are you asking me that question?

Q. Yes, I am.

A. Yes, I certainly do say that it was wrong to haggle for an agreement.

Q. Don't you think a man, even though he has committed perjury, is entitled to have his rights protected?

A. Oh, absolutely, but he hasn't got a right to haggle for an agreement. His attorney hasn't, based on that perjured testimony.

Q. I agree with you on that.

A. And Mr. Alberts writes me—let us go back to his letter of the 28th—

Q. Go ahead. It is in the record.

1378 A. I want to answer this now because I think Mr. Alberts' letter to me of December 19th is a whole answer to this situation that you are interrogating me on at this time.

Q. Are you talking about his letter of the 19th which is in response to your letter of the 19th?

A. He is writing, and I am answering your question as to whether it is proper—yes.

Q. Tell me which letter.

A. Exhibit No. 76, Mr. Alberts' letter of December 19th. I don't mean to speak so fast, Mr. Freeman.

Mr. Alberts wrote me on that date and he said:

"Without qualification the only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28th, 1940."

That was not true. Larson had admitted perjury. He says:

"That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself and Larson. The only charge of wrongdoing thus far is at the instance of the self-
1379 confessed wrongdoer."

That wasn't true. And he says further:

"I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker."

In the first place, his words were not uncorroborated to Mr. Alberts, because Larson had confessed and, in the second place, we agree that his—

Q. You are operating on the basis that Larson had confessed. You are talking about what you know now.

A. You are asking me—

Q. I would like to get you back of the time of either December or November, 1940.

A. You asked me if he had done right, and I am answering that question.

Q. As of today?

A. Yes, in the light of my knowledge today, and I would like to answer.

Q. Go ahead.

A. Then he challenges me, notwithstanding that he knows this testimony is perjured, and he is haggling for an agreement and he says:

1380. "Present corroboration of competent type, with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority."

He knew we were entitled to an award at that time, and I say it is wrong, since you asked the question.

Q. Now that you have testified as to what you know now, you knew that Mr. Alberts had informed your office that if he found that Larson had falsified or that Larson's story wasn't correct, that he would withdraw as attorney, do you recall that?

A. Yes, I was told that.

Q. And you knew then that Mr. Hobbs took over on November 29th, 1940, at which time Mr. Hobbs wrote to Mr. Fidler. You knew that, didn't you?

A. Yes, that was in connection, I understand, with the

settlement. I think Mr. Fidler made that plain to me. Mr. Alberts did not withdraw.

Q. And you dealt with Mr. Hobbs, and when I say you, Mr. Lindsey, I mean your firm, from November 29th up until at least December 18th, on the basis that Mr. Hobbs was then representing Larson and Precision, did you 13801 not?

A. Now you have got to divide the two, Mr. Freeman, because as to the negotiations, the settlement, yes; as to the Interference, no, as evidenced by the fact that Mr. Alberts on December 2nd, days after you say he said he would withdraw if he found it true, entered into a stipulation with Mr. Fidler showing that he was still attorney of law and recognized that he was attorney of record in the Patent Office. And on December 18th we served notice of taking depositions on Mr. Alberts, and you may recall that Mr. Hobbs wrote Precision at the time and stated, that is, on December 19th, that we had properly served the notice on Mr. Alberts rather than on Mr. Hobbs.

So that I say the record clearly shows that Mr. Alberts was representing Larson in the Interference and Mr. Hobbs was only in the picture in connection with the settlement.

Q. And you know further that unless there was something wrong with the Interference dates of Larson, there wasn't any need for any kind of a settlement. You know that, do you not?

A. No, they could have conceded priority. That is 1381 what we wanted.

Q. You wouldn't have taken a concession of priority if you knew that Larson was the true and first inventor, would you?

A. Why not?

Q. Would you do that?

A. If Larson was? Of course not. Of course not. I know well enough that if they would give us a concession of priority, I would take it. Why shouldn't I?

Q. You wouldn't take a concession of priority when you knew the other man was the inventor?

A. I didn't know it. I didn't believe he was. I suspected he wasn't.

Q. And you knew that the other man—and when I say the other man I mean Larson—had put in testimony with

respect to his dates which were way ahead of any dates put in by Zimmerman.

A. Sure, and I suspected they were faked.

Q. And you still want to tell us that you distinguish between Mr. Alberts technically serving as counsel for Mr. Larson in the handling of the Patent Application and Mr. Hobbs of the firm of Haight, Goldstein and Hobbs, serving as counsel in connection with the settlement?

1382 A. I would say that that was the division. Mr. Alberts had signed this stipulation after this meeting with Thomasma; and we had served notice upon him. I don't think there is any question about that, Mr. Freeman. I don't know what you are driving at.

Q. Do you recall or have you had an opportunity to see the letter of Mr. Alberts to your firm of December 3rd, 1940, Defendants' Exhibit No. 71?

A. I don't recall seeing that letter, Mr. Freeman.

Q. I hand you a photostat. I do not have the original.

A. I may have seen it.

Q. Do you mind reading the first paragraph of that letter out loud?

A. "This will confirm my announcement at the conference held in your office on November 28th, 1940 with Messrs. Wacker, Allen, Thomasma and Joseph Johnson that I would withdraw as counsel for Kenneth R. Larson in the above-entitled proceeding in view of an alleged contradiction in the Larson testimony. This alleged contradiction indicates that a conflict of interests may develop between Snap On Tool Corporation and the interests represented by Kenneth R. Larson."

1383 Q. What was your question, Mr. Freeman?

Q. I am just asking you whether or not that letter didn't confirm what Mr. Alberts told you or told your office on November 28th, 1940 about his withdrawing?

A. No, sir.

Q. Even though he didn't formally go through the formality of withdrawing?

A. No, it doesn't confirm.

Q. And you dealt throughout your negotiations on the basis that Mr. Alberts was the attorney of record, is that correct?

A. With respect to the Interference, that is correct.

Q. And you distinguish or segregate the Interference proceedings from the settlement proceedings?

A. It is just the same. May your Honor please, if this case could be settled—and there is no chance of settling it—and Mr. Freeman engaged Mr. George Wilkinson to try to settle with us this lawsuit, and Mr. Wilkinson had made no appearance, we would then be supposed, according to Mr. Freeman's understanding and Mr. Alberts' view, to serve all our papers on Mr. Wilkinson even though he was not of record in the case. That is my understanding. Now, I would like to answer a little fuller. I

1384 didn't get to explain one of my answers which might be subject to misinterpretation. You asked me if this paragraph which I read confirmed what Mr. Alberts had said at the meeting, and I said no.

Q. With respect to his withdrawing.

A. No. You asked me if it confirmed what Mr. Alberts said at the meeting with respect to his withdrawing, and I said no. This letter says:

"This will confirm my announcement that I would withdraw as counsel."

What Mr. Alberts said, according to his own testimony in this case, was:

"If I find this to be the truth, I will withdraw."

It was not an announcement of withdrawal and, of course, he never announced that he was going to withdraw, because he never announced that he didn't find that it was the truth.

Q. Was there any reason whatsoever for a settlement unless Mr. Alberts and Snap-On had found that Larson had falsified and, putting it in reverse, that the Thomasma story was correct?

A. Oh, yes, plenty of reason.

1385 Q. In other words, you think the man with the earlier dates, with the prior models, assuming that they are truthful, should concede priority to somebody who was subsequent as an inventor, pay over money, assign an application and agree practically to go out of business, even though that party, after having gone through all the expense and labors of an Interference proceeding, could have prevailed?

A. Are you asking me a question or making an argument, Mr. Freeman?

Q. You know what I mean. You go ahead and answer.

A. Do you want me to answer that question?

Q. Yes.

A. Of course, you haven't painted the picture as it actually existed, Mr. Freeman.

Q. Well, you modify the painting and go ahead and paint.

A. You see, Zimmerman was the prior applicant in the Patent Office, and the presumption is that the first to file was the first to invent. Larson became the junior party in the Interference. He was obliged to take his testimony first, and he did that. At any time he could have conceded priority. While he had good proofs on the face of them, we were strongly suspicious of them in view of Thomasma's statement and other matters. We told the attorneys on the other side we would take a concession of priority, something that we were entitled to. When they came to us, that isn't what they offered. They wanted to protect a business, they wanted to protect these 6,000 wrenches which they had on order.

We suspected at the time, and Mr. Fidler and I discussed it, that they no doubt had another wrench that they were ready to put on the market. That has been confirmed in this court room. They came to us with a proposition of settlement. We supposed they weren't interested any more in the wrench. We were still suspicious there was still something wrong with the case. Thomasma's story may not have been entirely accurate, with all these nine witnesses testifying, and all these proofs, even if this drawing was not clearly proved or if something was wrong with it, there may have still been sufficient in the testimony to warrant a prosecution of the Interference, though we doubted that. There was the question of abandonment of invention which Mr. Fidler discussed with me in regard to this matter, and there was every reason why when you came to us, that it, Larson came to us with a proposition to settle; why we shouldn't have settled. We weren't convinced by any measure of means that Larson's proofs were true. We didn't think they were. There was no reason why we shouldn't take a concession of priority, and there was nothing wrong in taking it, under any theory of logic, fact or law, that I know of.

Q. Well, when you talk about abandonment or abandoning an experiment and some of these technical defenses, you will agree with me that even though Larson might have lost on some of those technical defenses he was still entitled to his day in court.

A. Why, of course, he was, but not after his attorney had found that he had perjured himself. He was entitled to it. I wouldn't have anything to do with that kind of a situation. If I knew a man stole a cow I wouldn't advise him not to return the cow and I wouldn't advise him to make the owner of the cow pay for its return. I wouldn't do that, Mr. Freeman, and I don't believe you would.

Q. But you would defend that individual if they asked him to return two cows, would you not?

A. Oh, yes, but if all I had to do was to give back the cow I would certainly give back the cow. I wouldn't have him haggle for another cow in substitute for the cow I had stolen. That is my position.

Q. Well, if there wasn't anything that you wanted other than a concession of priority, which was the cow from your example, why was it that you asked for second Larson application?

A. I have already explained that they wanted the license and they wouldn't pay royalty. We were looking for some other consideration, which was perfectly proper, and besides—

Q. Then why was it that you wanted this recognition of validity running from Snap-On to Automotive?

A. Snap-On was a party to the Interference. There wasn't anything unusual about that. I have settled dozens of them on that basis.

Q. You say Snap-On was a party?

A. Well, they owned the application.

Q. Then when you condemned Mr. Alberts for holding up the settlement when Larson wanted to settle, you are now telling us, are you not, that Snap-On had a right to be protected?

A. Of course, they had a right to be protected, but my point is that they knew perjury had been committed, that Larson had no standing in the Patent Office whatsoever, and notwithstanding they knew there was perjury—Snap-On I am speaking of, as well as Mr. Alberts—they were haggling for a consideration from Wacker, from Automotive, and I say that when they found out that that testimony was perjured and they were convinced that they couldn't win in the Patent Office they had no business in doing any haggling about terms. They should have either abandoned the application, as provided for in the

Patent Office rules, or granted a concession of priority. A concession was not necessary at all, Mr. Freeman.

1390 Q. Were you the one that made the request for the Larson second application? And I use the word "you" to mean you personally.

A. I couldn't say whether I thought of it or not and probably not because I don't think I knew it was in existence when the question arose.

Q. Now, Mr. Lindsey, you agree with me that after Mr. Hobbs entered the picture and had talked to Mr. Fidler on December 2, 1940, that thereafter whatever holding up of the reporter transcribing the testimony in the Interference was done by mutual consent of both parties?

A. Yes, that was my understanding, that Mr. Fidler—

1391 Mr. Freeman: Read the question and answer, please.

(Record read as heretofore recorded.)

The Witness: (Continuing)—agreed to that.

Mr. Freeman: Q. So, when you became somewhat bothered upon receipt of Mr. Alberts' letter of December 17th, you were really referring back to the time prior to December 2, 1940, were you not?

A. Yes, his letter of the 17th and his notice of substitution.

Q. And did Mr. Fidler, when you conferred with him with respect to the court reporter transcribing the notes, tell you that Mr. Alberts had written to the court reporter and had sent a copy of his letter to the court reporter to your office?

A. Yes, I remember that letter.

Q. And I am handing you such a letter.

(Handing document to witness.)

A. Yes, I remember that letter.

Q. And you were still complaining about the holding up of the transcribing to Mr. Alberts, is that correct?

A. At what time?

Q. That is holding—in other words, you complained on December 9th about the court reporter not having transcribed the record promptly?

A. That was the 19th, wasn't it?

Q. December 19th.

A. December 19th.

Q. Yes, your letter to Mr.—

A. Oh yes, that is right but at that time Mr. Alberts was trying to shove the Interference off on Mr. Hobbs.

Q. We are talking about the court reporter.

A. All right. Let me get your question.

Q. At the time you wrote Mr. Alberts on December 19th, whatever complaint you had with respect to the court reporter and Mr. Alberts' responsibility for the court reporter, that was all for a time prior to December 2, 1940 when Mr. Hobbs entered the picture, is that correct?

A. That is correct, plus his responsibility to see the reporter had gotten it out after we had served notice to take depositions.

Q. Now, had you made any demand to Mr. Alberts after all negotiations broke off on December 18th that he instruct the reporter to go ahead and get the record completed?

A. No, I think not.

1393 Q. And the first demand that you served on Mr. Alberts for the rest of the transcript was on December 18th, when you were back in the Interference, so to speak, is that correct?

A. I think that is correct.

Mr. Freeman: We offer in evidence as Defendants' Exhibit 103, the letter from Mr. Alberts on November 19, 1940 to the reporter, Thomas L. Raftery, and I read that letter.

(Defendants' Exhibit No. 103 was thereupon read to the court by Mr. Freeman.)

The Court: If there is no objection, it will be admitted. What is the date of that?

Mr. Freeman: That is November 19, 1940.

The Court: November?

Mr. Freeman: 19th, 1940.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT No. 103.)

Mr. Freeman: Q. You talked to Mr. Fidler on the morning of November 4th when Mr. Fidler was going to appear before Judge Barnes with respect to certain certifications of questions involved in the Interference, 1394 that is correct, is it not?

A. Yes, I think that was the date; at least, he was about ready to go before Judge Barnes on this motion to compel witnesses to answer questions and I presume that was the date.

Report of Proceedings.

Q. Did Mr. Fidler tell you on that morning that he had spent several hours the preceding evening with Mr. Thomasma at his home where Wacker was present and where there were other witnesses present?

A. As I recall, he didn't. He may have mentioned it but I don't have any recollection of it.

Q. Did he tell you anything about Mr. Travis having telephoned Mr. Wacker between 4 and 2 o'clock in the morning on November 4th to report Thomasma would stand up or would testify?

A. I have no recollection of that whatsoever, Mr. Freeman.

Q. What did Mr. Fidler tell you with respect to Krichiver and Thomasma's efforts to sell stock to Precision?

A. I am sure there was nothing up to that time about that matter.

Q. Now, what was this motion Mr. Fidler discussed with you on the morning of November 4th that was to be presented later in the day to Judge Barnes?

A. I know now but I didn't know at the time what the question was.

Q. Do you know now?

A. Oh yes.

Q. It had to do with what?

A. Claim interpretation.

Q. What did you learn from Mr. Fidler with respect to the Interference between November 4th and December 9th when you entered the picture, so to speak?

A. I don't think I really learned anything much about it during that period. I had been over to Grand Rapids for almost two weeks in connection with the trial of this case, as I recall.

Q. Had you learned anything that warranted your giving to Mr. Hobbs a 24-hours to take-it-or-leave-it proposition?

A. You mean before—

Q. Between the 4th of November and up to the 11th of December when you called Mr. Hobbs, what had you learned?

A. I think I have already said that I recall there was a telephone conference between Mr. Hobbs and Mr. Fidler in which Mr. Fidler had turned down Mr. Hobbs' proposal.

1396 Will you read the question, please?

(Pending question as above recorded read by reporter.)

The Witness: Furthermore, I have not testified that I gave Mr. Hobbs a 24-hour proposition. If I have, I didn't intend to do so.

Mr. Freeman: Q. You sent Mr. Hobbs a copy of your letter of December 19th, Defendants' Exhibit 68, to Mr. Hobbs, did you not?

A. As I recall, I did. May I have that?

(Document handed to witness by Mr. Hibben.)

Q. And you had at that time received Mr. Hobbs' letter that he was not going to accept the power of attorney and that he would not proceed in the Interference, had you not?

A. Which letter was that, Mr. Freeman?

The Court: The letter of December 19th.

The Witness: December 19th when I had written my letter of the 19th, you mean?

Mr. Freeman: Q. Yes, when you had written your letter of the 19th to Mr. Alberts.

A. I don't think I had, Mr. Freeman. That is Mr. Hobbs' letter of the 19th, Plaintiff's Exhibit 34, in 1397 which he says, "I told Mr. Larson a week or so ago—", is that the letter you have in mind?

Q. Yes.

A. No, I think I received that on the 26th, Mr. Freeman.

Q. Well, you were serving notice on Mr. Alberts because I think you testified that Hobbs would not accept responsibility or the power of attorney in the Interference case, is that correct?

A. That is correct.

Q. And the letter of December 19th had to do with the Interference, your letter of December 19th, Defendants' Exhibit 68?

A. That is correct.

Q. Now, just what was your reason in sending Mr. Hobbs a copy of that letter?

A. Well, now, I think my letter of the 18th, probably with respect to the demand answers that question.

I had sent a copy of my letter of December 18th to Mr. Alberts with respect to the taking of the testimony to Mr. Hobbs and in my letter to Mr. Hobbs of December 18th, Plaintiff's Exhibit 31, I said to Mr. Hobbs:

1398 "Merely to keep you fully advised, I am enclosing a copy of my letter of this morning to Mr. Alberts

together with a copy of the demand and notice to take depositions."

Then I said:

"I am sorry it is necessary to proceed but, in view of the excessive demands of Snap-On, and, particularly, in the light of all the circumstances, there is nothing else for us to do."

I wanted to advise Mr. Hobbs what we were doing.

Q. You were then out of the settlement stage and back into the interference stage and you were looking to Mr. Alberts in that respect, is that correct?

A. With respect to the taking of the depositions, that is correct.

Q. And that was prior to December 19th that there was the stepping out from the settlement stage onto the interference stage, is that correct?

A. That is right.

Q. And I now ask you then why, what your purpose was in sending a copy of this letter of December 19th addressed to Mr. Alberts with a copy for Snap-On to Mr. Hobbs?

1399 A. As a matter of courtesy.

Q. Courtesy?

A. Of course.

Q. Even though you knew that he was out of the case?

A. Why, of course, as a matter of courtesy, I had been keeping him advised.

Mr. Freeman: That is all.

Redirect Examination by Mr. Smith

Q. Mr. Lindsey, I believe in your testimony on cross examination that you were asked by Mr. Freeman whether or not you had ever made a demand on Mr. Alberts with reference to payments of money to be made from Snap-On to Automotive and I think you answered "No." Do you recall a conversation which you had with Mr. Alberts on December 11th with reference to those matters?

A. I haven't a clear recollection of that conversation at all. I see this—

Q. I show you a memorandum prepared by Mr. Harry C. Alberts, dated December 11, 1940, which is in evidence as Defendants' Exhibit 72, and ask you if that refreshes your recollection?

1400 (Handing exhibit to witness.)

Mr. Freeman: That is the Alberts memorandum of December 11, 1940.

Mr. Smith: Yes, right.

The Witness: A. I have no clear recollection of this conversation. I didn't have any clear recollection when Mr. Alberts was testifying and I saw a copy of this. I don't recall of any particular telephone conference with Mr. Alberts. I may have had one or two but I have no recollection of this one.

Mr. Smith: Nothing further.

The Court: All right, call your next witness.

(Witness excused.)

Mr. Smith: If the court please, on behalf of Mr. Fidler, I make the same motion I made for Mr. Lindsey, that is: Mr. Fidler desires to withdraw for the purpose of testifying.

The Court: Let the record show he has withdrawn for the purpose of testifying.

1401 RAYMOND E. FIDLER, called as a witness by Automotive Maintenance Machinery Co., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. Your name and address, please?

A. Raymond E. Fidler. My home is at 9534 Lawndale, Skokie, Illinois, and I am temporarily residing at 6200 North Kenmore Avenue.

Q. What is your profession, Mr. Fidler?

A. Attorney and, particularly, patent law.

Q. And with what firm or of what firm are you a member?

A. Davis, Lindsey, Smith & Shonts.

Q. How long have you been a member of that firm?

A. I came with that firm November 1, 1925 and became a member about the 1st of the year, 1935.

Q. And how long have you been practising as an attorney, either patent or otherwise?

A. For about twenty years. Prior to that time, I was associated with the Westinghouse Air Brake Company at Wilmerding, Pennsylvania, and that was more or less house

attorney work in connection with patent applications, 1402 and so forth, for about five years there.

Q. Now, as a member of the firm of Davis, Lindsey, Smith & Shouts, what is the fact as to whether you have largely represented Frederick G. Wacker and the Automotive Maintenance Machinery Co. in its patent matters for some time?

A. I have, and, particularly, since about the year 1927, practically all of the patent matters except for such times I would call others of my associates in for consultation.

Q. Now, as attorney for Automotive Maintenance Machinery Co., you filed the so-called Zimmerman application in the United States Patent Office on November 22, 1937, which was given serial No. 175863, is that true?

A. I did.

Q. And subsequently, on May 31st, 1938, you also filed a second Zimmerman application which was given Serial No. 210869?

A. That is correct.

Q. Now, what was the subject matter of both of those applications?

A. They both covered what I have always referred to as a torque measuring wrench. The first application 1403 covered the originally developed form by Automotive; and the second covered improvements on that form.

Both of the applications covered a wrench of the type where it might be applied to the work, the nut or whatnot, and force applied by the operator from any point or in any way he might grasp the wrench without affecting the reading of the wrench.

Q. Now, who was the owner of the subject matter of those applications at the time the applications were filed?

A. Automotive Maintenance Machinery Co.

Q. As what, assignee of Zimmerman?

A. As assignee of the inventor Zimmerman.

Q. Now, at the time you filed these two applications, the first one November 22, 1937, and the second May 31, 1938, were you advised as to whether Automotive was then engaged in manufacturing the subject matter of those applications?

A. I understood that they were manufacturing and that they were manufacturing, I believe, at that time mainly for Snap-On Tools Corporation.

Q. Now, subsequent to the filing of those two applica-

tions, were you advised of the fact that Snap-On was
1404 selling torque wrenches or similar torque wrenches
which were being manufactured by someone other
than Automotive Maintenance Machinery Co.?

The Witness: May I have the question, please.

(Pending question read by the reporter.)

A. Yes, I was so advised by Mr. Wacker of Automotive.
I believe it was sometime during the year 1939, around
about the middle of the year, and at that time an effort
was made to secure one of these competitive wrenches and
that was done and the competitive wrench, as I remember,
was in a box which bore the name of Snap-On Tools Cor-
poration.

That wrench embodied the same principles as the wrench
that Automotive had been making and supplying to Snap-
On and the same principles that were disclosed in the ap-
plications that you referred to a moment ago.

Mr. Smith: Q. Now, after you had secured the wrench
and determined the fact that it was in a box with the name
Snap-On on the outside of it, what did you next do?

A. I think that I advised Mr. Wacker of the similarity
of that wrench to his wrench.

Q. Were you advised as to the name of the manufac-
turer of the wrench which Snap-On was selling?

1405 A. I think that I asked Mr. Wacker to secure such
information as he might respecting the wrench and
its source of manufacture and it is my recollection that he
did inform me that he was advised that it was made by
Precision Instrument Manufacturing Company of Des
Plaines.

Q. Now, in connection with that information, did you
make any effort to secure further information with ref-
erence to the manufacture of this wrench?

A. I don't recall that I made any effort myself.

Q. Well, did you make any effort to have anybody else
secure such information?

A. I think I told Mr. Wacker to keep after such infor-
mation as he might be able to obtain because we wanted the
facts in respect to the matter and I think that, as I recol-
lect it, he got some information or passed on to me some
information to the effect that one of our employees, one
of Automotive's employees, had something to do with
that wrench.

Q. And what was the name of this employee?

A. Well, I later learned that it was Mr. George B. Thomasma. I remember—I am sure I didn't know definitely because about the time that the Interference was declared, I wrote a letter to Mr. Wacker in which I 1406 referred to the other party in the Interference as Kenneth R. Larson who was probably the Automotive employee who had gone to Snap-On.

Q. And that letter to which you have just referred is Defendants' Exhibit 79, is that correct?

(Handing exhibit to witness.)

A. That is correct.

Q. Now, did you have any examination made in an effort to determine whether or not George B. Thomasma was one of the persons associated or connected with the Precision Instrument Company at any later date?

A. I did. After the Declaration of the Interference which, I believe, occurred about in October, 1939, and after I had written this letter to Mr. Wacker, he sent to me a Dun & Bradstreet report on Precision Instrument Manufacturing Company, and I also had the records over here in the City Hall checked with respect to Precision and I learned that a George B. Thomasma (T-h-o-m-a-s-a), not Thomasma (T-h-o-m-a-s-m-a), was one of the incorporators and a director and stockholder of Precision and, following that through, I learned shortly after that, I believe it was around sometime in November, 1940, that the party was or must be George B. Thomasma, our employee.

1407 Q. 1940, or 1939?

A. 1939.

Q. Now, the Interference No. 77565 was declared by the Patent Office on October 11, 1939, is that correct?

A. That is correct.

Q. Now, following the declaration of the Interference, did you confer with Mr. Wacker regarding the fact that such an Interference had been declared?

A. Yes.

Q. Just tell us what the purpose of your conference was and what the conclusion of it was. Do you remember?

A. I don't believe I conferred with him right away. I think I wrote him a letter advising him of the declaration of the Interference and, in accordance with the practice of the Patent Office, I believe they had sent him notice of such declaration which he sent to me and, in advising him of

that, I informed him of what the next step in the matter was, namely, the preparation of preliminary statements and, particularly, the collection of material upon which the dates to be set forth in the preliminary statement could be based and I think that in that letter I informed him, the October 13th letter, of Snap-On's connection with the Interference as assignee which, of course, would 1408 be shown by the notice of the Interference which Mr.

Wacker secured and I think I made some statements to Mr. Wacker in the letter respecting the preliminary statement where I expressed my views, and so forth, as to the situation.

Q. Now, for the purpose of the record, will you just explain briefly the procedure of the Patent Office having to do with the filing of preliminary statements following the declaration of an interference?

A. In declaring an Interference, the Patent Office selects claims appearing in the two Interfering applications and includes such as the Patent Office considers necessary to determine the issues, in what is called the Declaration of Interference, and, in so declaring the Interference, they state that a preliminary statement should be filed by both parties within a certain time.

And in that preliminary statement, the Patent Office requires that the parties set forth when they disclosed the invention to others, when they first made drawings, when they first made a written description, when they first built a full size device, and when they first successfully reduced to practice that device, and, following the filing of 1409 those preliminary statements, the Patent Office sets a time for the filing of any motions that any of the parties wish to make.

Now, those motions may take various forms such as, for example, one party thinks that the other cannot make the claims in their application, they don't read on the disclosure, or something like that, they move to dissolve the Interference on that ground.

Also other motions are ones in which if one party has another application or has in the application in Interference claims or subject matter which is common to the Interfering application which he wishes to contest in the Interference, he brings a motion asking that his application be amended to include those claims and that they be included in the Interference.

In other words, under the Patent Office practice, they endeavor to take care in one Interference proceeding of all matters and issues that should be taken care of between the parties at that time.

What I mean by that is this: If I have another application pending which the other party does not know about, it is my duty to bring forth that application if it discloses subject matter which is disclosed in the subject matter of the other party and which I believe is patentable subject matter and may be the subject matter of a patent.

Q. Now, up to the time that the date is definitely set for the hearing on the Interference, is either party aware of the dates alleged by the other party in the preliminary statements?

A. The preliminary statements are not open to the inspection of either party until after all motions have been disposed of in the Patent Office and they are ready for the taking of testimony.

Q. All right. Now, in this case, following the declaration of the Interference, a preliminary statement was filed by Mr. Alberts on behalf of Larson on or about November 13, 1939, and you filed a preliminary statement on behalf of Zimmerman on or about November 10, 1939, is that correct?

A. That is correct.

Q. And following the filing of both of these preliminary statements by the respective parties, there were certain motions such as you have described which took place in this case, is that correct?

A. That is correct and, as a result of which, the Interference was reformed requiring the filing of new preliminary statements.

Q. Up to the time that the Interference was reformed, had you had made available to you the dates which were cited in the preliminary statement filed by Mr. Alberts?

A. No.

Q. Now, after the Interference was reformed, then Mr. Alberts filed a second preliminary statement on behalf of Mr. Larson on or about June 27, 1940, and you filed a similar second preliminary statement on behalf of Zimmerman on or about July 12, 1940, is that correct?

A. That is correct.

Q. Now, when did you first see a copy of either the

first or second preliminary statement filed by Mr. Alberts on behalf of Larson?

A. As I recollect it from refreshing my memory from my records, I first received a copy of Larson's second preliminary statement about the 3d or 4th of August, 1940, and I then considered whether or not I had the right to see the first preliminary statement because one of the counts in the Interference as reformed was the same as originally declared, and I thought I was entitled to have the preliminary statement with respect to that count and about August 12th, I believe, I secured a copy of 1412 the original preliminary statement—that is 1940.

Q. Now, after you had received the preliminary statements and the dates were made available to you as the dates on which Larson claimed he had done certain things, what did you do next?

A. Well, I, as I remember it, I wrote to Mr. Wacker and I expressed great surprise at the dates that had been alleged by Larson in his preliminary statement and stated my views to Mr. Wacker quite fully, particularly because I had been quite frank in stating my views previously in the matter to the effect I didn't think that Snap-On intended to contest this Interference seriously.

Q. I hand you Defendants' Exhibit No. 87, dated August 5, 1940, addressed by you to Automotive Maintenance Machinery Co., attention Mr. Wacker, and ask you if that is the letter to which you have just referred (handing exhibit to witness)?

A. That is the letter and in this letter I advised Mr. Wacker to the effect that in situations of this kind I think that it is advisable to make thorough investigation and asked in effect for him to give some consideration to that matter which he did and instructed me to make an investigation.

1413 Q. Now, whom did you secure to make that investigation?

A. Mr. Jolin A. Wise.

Q. That is the Mr. Wise who testified on the stand previously?

A. That is correct.

Q. What were the instructions or information which you gave to Mr. Wise?

A. I can't recollect everything in detail that I told

him but I know I did tell him the situation, as I understood it to be up to that time.

I explained to him that Automotive had started out with the development of a line of torque wrenches and they were a particular type of wrench, and we had become involved in an Interference and that the Interference was with a man by the name of Kenneth R. Larson of Precision Instrument Manufacturing Company of Des Plaines, Illinois, and that George B. Thomasma, one of Automotive's former employees, was also a director of that company and that Automotive had dealt with Snap-On in respect to a very similar kind of wrench and that now the wrench involved apparently was being made by the Precision Instrument Manufacturing Company for the Snap-On Tools Corporation and that it seemed to me a very unusual situation, that there must be something wrong.

I, knowing of Automotive's dealings with Snap-On, couldn't conceive of Snap-On dealing with Automotive in respect to that wrench if they had their own inventor who had conceived that wrench two or three years before Automotive had conceived it, and I asked him to check Thomasma's activities and Larson's activities and try to determine the fact as to when and where and why that wrench originated and whether or not Snap-On had any part in the picture.

Q. Did you take any part in directing the methods to be used by Mr. Wise in securing the information you asked for?

A. I did not.

Q. Now, about when was it that you first requested Mr. Wise to make an investigation in this case?

A. I think that Mr. Wacker telephoned me and we discussed the matter and it was within a few days after my letter of August 5, 1940.

Q. Now, the taking of testimony on behalf of Larson in Interference 77565 began October 24, 1940, is that correct?

A. That is correct.

1415 Q. And with certain interruptions, it continued up until November 4, 1940?

A. That is correct.

Q. Now, as of the date of the beginning of the taking of those depositions on October 24, 1940, had Mr. Wise made any reports to you of progress which he was making

in connection with his investigation and, when I say reports, I mean either written or verbal for the purpose of this question?

A. He made no written reports but he made many verbal reports and, I may say, at that time he had not gathered for me information which would establish the fact or the facts that I was seeking. He had secured information respecting Mr. Larson and his activities and had secured some information respecting Mr. Thonasma and Mr. Carlsen and information respecting some of the activities of Larson and Thonasma but nothing definite that I could say definite respecting the times of working out the wrenches.

1416 Q. Let me ask you right here, what is the fact as to whether or not there was anything unusual in Mr. Wise's failure to make written reports to you in this case?

A. None whatever.

Q. Had you or your firm employed Mr. Wise previously in the making of investigations in other cases?

A. Several years; practically all the time that I had been there, as I recollect.

Q. And what is the fact as to whether it was his usual practice not to make written reports?

A. It was his practice not to make written reports.

Q. Now, did you handle the cross examination of the Larson Interference witnesses during the taking of the testimony from October 24 to November 4, 1940?

A. I did.

Q. What was the order of proof which was followed in the taking of the Larson depositions in the Interference?

A. Well, I think that they started in with the foundry man first.

Q. He testified to what? tell us quickly.

A. With respect to the making of castings, and I don't remember in detail just after that what the order was; but all of what I would call the corroborating witnesses testified first, and then Mr. Larson last.

1417 Q. You heard Mr. Alberts testify on the stand in this case, did you?

A. Yes.

Q. You heard Mr. Alberts describe your cross-examination in the Interference proceedings as a searching cross examination?

A. Yes.

Q. Would you say that that was an accurate description of your cross-examination?

A. I would.

Q. Now, what were your reasons, if any, at that time in conducting the kind of an examination which Mr. Alberts and you both described as being searching?

A. Well, the story that I have already related, in respect to the relationship between Automotive and Snap-On, and the relationship between Thomasma and Precision, and the relationship between Precision and Snap-On had led me to believe that such a thing as alleged in Larson's preliminary statement must be wrong somewhere.

And when I heard witnesses testify as to the story 1418 that I heard, a straight forward story, with records and models, I still have that feeling in me, that there was something wrong; and I was trying in every conceivable way to find the loophole if there was any.

I also found some of the witnesses somewhat evasive; there were objections to questions on cross-examination wherein I was trying to search out this relationship, about the stockholders, and so forth; because in going ahead and proving that I might have to call stockholders, and anybody that knew anything about it.

And as the result of all that, it was most difficult for me to give up in cross-examination, where I was getting stopped at every turn.

Q. Had you secured any information with reference to this man Carlsen at the time of that interference?

A. Yes.

Q. What was the information that you had secured about him, and how did you get it?

A. I had been informed that his name was not Carlsen, and that it was Palis, or something like that; and that he had had some connection with a beauty parlor, or he bought a beauty parlor from somebody by that name, and he 1419 had adopted the name.

And then in the cross-examination of Mr. Carlsen I recollect that I started back over his past history, and he refused to answer certain questions, on the basis that every man's life has something that he does not want the world to know about. So I did not press him for the confidential information.

That is another thing that I tried in other ways to get,

the background there, to see what his incentive might be if there was something wrong in this picture.

Q. And how many witnesses were put on in behalf of Larson in the Interference?

A. I believe nine, including Mr. Larson.

Q. Now, during the taking of the Larson Interference depositions, did you have any discussion with Mr. Alberts with reference to the testimony of his witnesses, or the manner in which they were testifying?

A. Well, I recollect that when Ford testified I was very much impressed with the fact that he could hardly complete a sentence without cursing. And when I got his transcript, the transcript of his testimony, the reporter had left out the curse words; and I objected to that. I don't think

it is on the record; as I recall, it was an off the record discussion; and the reporter said that he usually did not put those words in unless he was told to specifically; and it is my understanding that in the final submitting of that to the Patent Office that that testimony would be transcribed as the witness had given it; because I thought it might well affect his credibility in the matter.

Q. Did you hear Mr. Alberts testify as to the fact that you had a motion on or before Judge Barnes in connection with the refusal of certain witnesses to answer certain questions put to him by you in the Interference examination?

A. Yes; one of the things that impressed me very much in the Interference was this: The Larson Application as filed in the Patent Office was limited in its claims to one specific feature. As I understood, it was what we call the tail piece for operating the gauge. And I wondered why the claims would be so limited in the filing of the application, whereas now this serious attempt to obtain the broad claims which came from our application.

I had the feeling that the application as originally filed was filed with the knowledge of Snap-On relation 1421 with Automotive; with the knowledge of the wrench that had been supplied to Snap-On, and with the knowledge that they wanted to avoid anything that might involve a conflict with the Automotive or the Zimmerman applications.

As a matter of fact, contrary to the general practice of the Patent Office, the Examiner had gone out of his way, as I felt, to suggest claims from our application to Larson, suggesting that he make them in order that an Inter-

Report of Proceedings.

ference be declared, instead of declaring the Interference on the basis that both parties were claiming by the same subject matter.

Tome: I got it fixed in my mind that there was something wrong there in that respect; and I was trying to find out from Larson whether or not he understood the claims as originally filed, and what the purpose was in so limiting the claims to that feature. And I asked him this question, and he was instructed not to answer.

I then instructed the reporter to prepare the record, I was taking the matter before Judge Barnes.

Q. I believe Mr. Alberts testified that one of the questions that was certified to Judge Barnes on that motion had to do with who the stockholders of Precision were.

1422 A. No; it was with respect to interpretation, what was the meaning of claim 1 of the application as originally filed.

Q. Now, in connection with that motion which you made before Judge Barnes, did you have any discussions with anyone regarding your going in on that motion?

A. I did.

Q. And if so, with whom?

A. I did. I believe, my best recollection is that it was with Mr. Lindsey; because I was going in there in connection with the very heart of this thing that was back in my mind. And the question in my mind was how far I could go before Judge Barnes in arguing this matter, whether I should bring up or say anything that might cause an inference that there was something wrong in the picture. And he definitely advised me no, that if I did that without proper background in the matter, that I might be getting myself into difficulties.

And I didn't say anything to Judge Barnes at that time, but argued the matter purely on the merits of the question per se. And he very quickly denied the motion.

Q. Now calling your attention to a meeting that was held at your home November 3, 1940, when did you 1423 first know of that meeting?

A. I cannot say; I know that it was.

Q. Well, did you arrange it?

A. I did not arrange it; but some one probably did, or Mr. Waacker told me that the meeting was to be held and wanted to know if it would be all right to hold it in my home. And I think that there was some arrangement for

it to be held a certain time on that day, which was Sunday, November 3, 1940; and that something went wrong with the plans, and it was held later; I do not remember exactly how those arrangements came about.

Q. What time was the meeting actually held?

A. It was held in the evening of November 3, 1940.

Q. And who was at that meeting?

A. There was Mr. Wacker, Mr. Travis, Mr. Thomasma, Mr. Krichiver, and I.

Q. How long did the conference take?

A. I cannot say; an hour, or something like that.

Q. Now will you tell us to the best of your recollection what was said, and by whom it was said in each instance, during that conference at your home on that evening?

1424 A. I cannot repeat the words said by anybody, to whom or by whom. I can tell you generally what happened, and from which side it came; and that is the best I can do.

Q. All right; give us that.

A. Mr. Thomasma and his attorney, Mr. Krichiver, inferred from time to time that there was something wrong with the Interference situation; inferred that Thomasma could give us some interesting information; but made it clear that what they wanted to do first of all, before anything like that, was to see that Mr. Thomasma would not be hurt by doing it.

Mr. Thomasma was a stockholder in Precision, and they wanted to sell to us Mr. Thomasma's stock. Because they thought if he testified, his story would hurt Precision, maybe put Precision out of business, and would hurt him in the community; and he wanted to get rid of his stock before he did any talking in the matter; all the time acting mysteriously, and trying to create in my mind the impression that they had something for me that would be well worth our while in purchasing the stock.

Mr. Wacker and I flatly took the position that we would do nothing of the sort, we would have nothing to do 1425 with it. As a matter of fact, we had had an experience before with Mr. Krichiver. We told him that because of our controversy with Precision, that we could not afford to own any stock in that company; it just could not be done.

And we explained that Mr. Thomasma might become a witness in the Interference, and I was doing nothing where

anybody could say I was trying to influence, buy him, or anything else, with respect to his testimony. Because I had a difficult situation confronting me, and I didn't want to hurt him in any way if I were going to use him as a witness.

I did during that conference, after, you might say, the taunting that they did,—I did say—

The Court: What does taunting mean?

A. Well, sort of teasing; leading me to believe that they knew something. I did say—well, I know this, for example; Stated the relationship with respect to Thomasma and Automotive, and Thomasma and Precision, and that Precision was making a wrench for Automotive or for Sump-On, and various things of that kind, facts that I knew and had gained through investigation in an endeavor to 1426 get them to drop to me some hint, or something with respect to the thing that they were acting so mysteriously about.

And I think it is set forth in the memorandum that Mr. Wacker prepared, that they acquiesced in those things that I stated.

Q. Was there any comparing or comparison of drawings made at that time?

A. No.

Q. Now, in your answer you said that you had had previous experience with Krichiver; what did you mean by that?

A. Well, back in June, 1940, Mr. Wacker got a letter from an attorney by the name of Krichiver that said he had some information for him that would be of interest to him. Mr. Wacker, as I recall, called me and told me to call Krichiver and make an appointment; which I did.

And Mr. Krichiver met Mr. Wacker and me in my office. Mr. Krichiver said that he was a stockholder in Precision; he understood that there was a controversy or of some kind, and that he would like to sell to us his stock; and he thought it would be of material gain or benefit to us to own that stock; and that if we did, and we were interested in buying the stock, that he could get for us 1427 a considerably larger amount of stock. I think Mr. Krichiver had five shares, something like that.

He mentioned nothing about Mr. Thomasma at that time; and I did not get the connection in that respect until the

conference at my home, when Mr. Krichiver was there representing Mr. Thomasma.

Q. Were there any notes made of this meeting at your home on November 3, 1940?

A. Mr. Wacker at my request wrote me a letter setting forth his version of what transpired.

Q. You did not have a court reporter there?

A. Oh, no.

Q. Or any secretary of yours, taking down what happened?

A. No.

Q. Now, when did you next see Mr. Krichiver?

A. On November 6, 1940 Mr. Krichiver came to my office, his purpose being to further show me, if possible, that it would be perfectly proper, and a perfectly legitimate transaction, for Mr. Thomasma to sell to Automotive the stock owned by Thomasma. And I again flatly refused; and nothing more came of it.

Q. Now, anticipating for a moment the meeting 1428 that was held at your home on November 7th, did you at the time that you were talking with Mr. Krichiver on November 6th know that the meeting was going to be held at your home on November 7th?

A. No.

Q. Now, had Larson's testimony,—and when I speak of Larson I mean Larson personally—had Larson's testimony been completed in the Interference on November 4th?

A. It was completed very shortly after the hearing in Judge Barnes' court on that day. There was some redirect examination, and maybe some re cross examination after that; but my cross examination as such was completed very shortly.

Q. Now, this meeting on November 7, 1940, at your home, how did that meeting come about?

A. Some one called me on the 7th; my best recollection is it was Mr. Thomasma. I may be wrong; it might have been Mr. Travis.

Q. And what was told you at that time?

A. That Mr. Thomasma would like to see me and talk with me at my home on that evening.

Q. Who was present in your home that evening?

A. Mr. Thomasma, my secretary Miss Johnson, and myself.

1429 Q. And on that evening Thomasma told the story which subsequently became the so-called Thomasma affidavit, which has been mentioned in this case?

A. On that evening and the next evening, November 8th, he did that.

Q. In other words, the story that he told on those two evenings, as taken down by your secretary, Miss Johnson, ultimately became the Thomasma affidavit, is that right?

A. That is correct. And having heard that affidavit read here, I think that we must have done considerable talking and discussing the situation generally on the evening of November 7th. Because there were some questions that I asked that appear to be based upon something that he had told me previously; and I could not have had that except on the previous evening of November 7th.

Q. What arrangements were made to have it signed, and how was it signed,—when and where, if you know?

A. Well, I think that it is completely transcribed, and I read it through about five or six days after I took the statement, after the 8th of November. I made a few corrections in my questions, for the sake of clarity; but I did not change anything in what Mr. Thomasma had

1430 stated. And then on the 15th I had Mr. Herbert Schmid of our office take the affidavit out to Mr. Thomasma; and I instructed him to have Mr. Thomasma initial and have the notary put his seal on each sheet. And that was done.

I also asked that Mr. Thomasma make such corrections as he wanted to make, in ink, or in his own handwriting on the pages of the affidavit.

Q. Now, the contents of the last two pages of that affidavit, I believe it has been testified were added subsequently to November 7th and 8th; is that correct?

A. That is correct. That was done very shortly before the signing of the affidavit; and it is my recollection that that information was added in view of a telephone discussion of the subject matter thereof with Mr. Thomasma. I do not think that I would insert that in the affidavit without getting the information straight from Mr. Thomasma.

Q. That had to do with the so-called anonymous letter that was shown to him in an automobile somewhere in Des Plaines?

A. That is correct; that is the letter of November 11, 1940 from Mr. Alberts to Mr. Larson.

Q. Now, after Thomasma had told you the story on November 7th and 8th, what was done with reference 1431 to the investigation that was being made by Mr. Wise?

A. Well, then I instructed Mr. Wise to go ahead with the investigation, in an attempt to check Mr. Thomasma's story. One of the things that was a mystery to me at that time, and still is, was the name of Dawson on that drawing.

I have been told that Dawson, or I believe that the affidavit states something to the effect that Mr. Carlsen said that Mr. Dawson had been taken care of. I made as strenuous effort as I knew how to locate Dawson, because I thought he might hold an answer to a lot of things. I have never been able to find Mr. Dawson.

And I also had in mind various things that Mr. Thomasma had told to me which I was checking up on, and get the investigators going right on to complete the investigation for corroboration purposes; because so far as I knew then, it was a matter of getting the evidence together, and taking evidence in the interference to establish the fact, if possible.

Q. Did you make any investigation personally, other than and separate and apart from what Wise was doing?

A. I did.

Q. What did you do?

1432 A. I talked to Mrs. Thomasma, and I talked to Mr. Thomasma's brother John; and I talked to and took the matter up with a handwriting expert. I could not get any real coherent story from Mrs. Thomasma as to the wrench proposition, but she did one thing she did corroborate was the fact that she had introduced Carlsen to Mr. Larson, she having known him through going to the beauty parlor. Mr. Thomasma's brother could not back up the things which George Thomasma said that he could.

Q. What did that have to do with?

A. That was with respect to the making of the drawing that Larson said was made by the high school boy, and which Thomasma said he made.

And the handwriting expert I took the matter up with him; that was Mr. Salmon, to get his judgment, to try to find out whether or not it was the fact that the drawing was made by Thomasma.

Q. What did Mr. Salmon report to you, as a handwriting expert?

A. First of all, I tried to get Mrs. Keeler, and I could not get hold of her. And I then took the matter up with Mr. Salmon. I went over to his office on the 22nd of November, 1940, and showed him a small photostatic copy of the Larson drawing, which copy I believe had been furnished to me by Mr. Alberts.

And I explained the situation generally to him; and at the same time I took with me a drawing which Thomasma had given to me, in which he said that he had made, covering another device; namely, a cylinder surfacing tool, a hone. And the first time I talked to Mr. Salmon—

Q. November 22?

A. November 22; he did tell me that there were several similarities between the two drawings; and that the drawing supposed to have been made by the high school boy did not look like by a boy, but by a more mature person.

In that respect, I may say that in my pretrial deposition, as I told you right after I read my deposition, and after having refreshed my recollection with respect to a letter that I wrote to Mr. Wacker, that I improperly said that Mr. Salmon had not advised me there were many similarities. I know that he did, by refreshing my recollection from the letter I wrote to Mr. Wacker at the time that I advised him I could not or was unable to retain Mrs. Keeler.

Q. Did you hear Mr. Salmon testify on this stand?

1434 A. I did.

Q. That he left those drawings and comparisons at your office that night, and you were to send them to him the next day, or the day after?

A. That comes a little bit later; he asked for an enlargement of the Larson drawing, so far as possible to bring out the letter size, size of the drawing; the known drawing, we will say, that I presented to him. And I secured them for him, and sent them over to him; and I am not certain, but I think I called him on the 27th to find out if he was in position to give me an opinion.

But he was not, because he said that he required some further explanation; explained to me that in drawings and painting a man's work may improve from time to time, and characterizations may change in such a way that it creates uncertainties.

He came over to my office, because I was going to have

a meeting the next day with Mr. Alberts and Mr. Johnson; and I wanted the information, if possible, that I could give it to them. And he looked at the other drawings which I had in my office, which was on a cylinder surfacing machine; and he found in looking at that some other discrepancies, which I understood had him 1435 so worked up—what he was trying to tell me was that to tell me further about the work that he saw, and he couldn't tell me then whether it was or was not the work of the same man.

Q. And his story that you were to have something additional for him, and he was to pick it up in a day or two, is that substantially correct?

A. That is correct; but I became ill and was not back to my office until on the 9th of December. But in the meantime negotiations got around to the point of settlement; and we never got around to where I turned anything over to him. And I retained his work sheet, which I am quite sure I should not have had, from what he has told me.

Q. Now, this first discussion you had with Mr. Salmon was on November 22, 1940; is that correct?

A. That is right.

Q. Prior to that time, on November 9, 1940, you had had a conference with Mr. Alberts; is that correct?

A. That is correct.

Q. Will you tell us how that conference came about?

A. Well, by that time I had the statement by Thomasma.

Q. So-called Thomasma affidavit?

1436 A. So-called Thomasma affidavit; and I was working on a matter for the Burroughs Adding Machine Company in which I had a hearing in Washington November 18th; I was at the office of our Washington associates, Bacon & Thomas, who have done a lot of work in connection with Automotive's cases.

And I discussed with Mr. Charles Thomas of that firm the situation that was confronting me.

Q. Which was that, what situation?

A. In other words, I had this testimony of Larson, eight or nine witnesses, telling a fairly straight forward story, on the one hand; and I had the contradictory story of Thomasma on the other hand; and I didn't know what to do about it. In other words, I personally was inclined to take the position that I should do something drastic.

Q. By which you mean what?

A. I wanted to know whether there was any way that I could take this matter to the Patent Office; or whether I could take it up with proper authorities, the District Attorney.

Because at that time Mr. Wacker had been subjected to a great deal of expense; and if there was any way that the matter could be ended, with a minimum of expense to him, I would have been glad to do so.

I consulted with Mr. Thomas; and he told me, advised me that I had no reason to go to the Patent Office. He told me of a similar situation in which he had been involved; I believe it was in connection with some of the oil cracking cases, where a matter had been presented to the Patent Office and also to the District Attorney. The District Attorney would not touch it, because it was a priority matter in the Patent Office; and the Patent Office would not touch it because you go ahead and present your case; and when you have done that, then you can go into the matter.

So he warned me that I was in no position to go in there at that time. So he suggested that because of my lack of proof, I didn't have the proof, I didn't have the proof that was necessary to start something rolling; that maybe I could not stop, and it would come back on me as being responsible for it all; so I didn't have the proper proof.

Mr. Thomas did advise me, though, that what he would do under the circumstances would be to get in touch with

Mr. Alberts and explain this situation to him, and see whether he had any suggestions to offer.

I came back to Chicago on the 19th of November, got in touch with Mr. Alberts on that day or the next day, and told him that I had some information to discuss with him about a matter; and I wondered if he would come over to my office and talk with me. Out of professional courtesy, I asked him that; and he did come over.

Q. Who was in your office when he came over on November 20th?

A. Mr. Alberts and I were there alone.

Q. Now just tell us what conversation there was between Mr. Alberts and you on November 20th, in your office?

A. I cannot repeat words.

Q. Give us the substance.

A. My best recollection of the general substance of what transpired: Well, I remember that I prefaced my remarks, the statements to Mr. Alberts to the effect that in calling him over there I did not want him to feel that I was casting any reflections on him; that I was threatening him in any way; that if this interference should go forward there would be a lot of mean things that would be said, and I was calling him over to tell him about them, because I thought he should know about them.

1439 As a matter of professional courtesy. I told him that I had secured the Thomasma statement; and I told him that that statement contained many things contradictory to what Mr. Larson and his witnesses had testified to. I think that I had the affidavit; and my recollection is I offered Mr. Alberts an opportunity to look at it, but he did not want to do so at that time.

I explained, I told him some of the things that Thomasma had stated. I did tell him about the drawing, which Thomasma said in his statement was his own, instead of Larson's. I did tell him about the marking on the wrenches. I mentioned something about Carlsen under an assumed name; I mentioned those, what we might say those highlights of the Thomasma story, which were directly contradictory to things told by Larson and his witnesses.

And at the end of that Mr. Alberts mentioned something about that if a story like that were true, that of course adverse interests would arise as between Larson and Snap-On, or somewhere in the picture; and that he would like his client to hear the story first hand. And as the result of that, arrangements were made for us later to get together in my office on November 28, 1940.

1440 Mr. Smith: Q. Have you exhausted your memory as to what it was that you told Mr. Alberts in your office on November 20th?

A. That is all I recollect now.

Q. I am referring in my following questions to Defendants Exhibit No. 70, which purports to be a memorandum of Mr. Alberts as to his conference with you on November 20th and which was produced by Mr. Alberts at the time his pre-trial deposition was taken or some time immediately during the negotiations which led to this trial.

In that memorandum Mr. Alberts notes that you said

something to him about Larson having been at AMMCO on numerous evenings with Thomasma and that he had the run of the plant, Thomasma, and was in the nature of a straw boss.

Do you remember anything about that being said on November 20th?

A: I think there was something to that effect.

Q: He also notes that Thomasma was considered a genius in many ways and was supposedly the originator of many improvements on the AMMCO wrench that were submitted to Zimmerman, but the latter would never 1441 adopt them.

A: Something to that effect, yes.

Q: He also notes that you discussed the fact that the lathe in Larson's basement was purchased out of funds borrowed from the bank and this loan was signed for both by Thomasma and Larson sometime in 1937 and 1938.

A: That is correct, I remember that.

Q: That you also stated at that meeting that Carlsen supposedly met Larson for the first time through Thomasma's wife who frequented the Carlsen Beauty Shop, and that was in 1938.

A: That is correct. Those are matter that were contained in the Thomasma affidavit, as I recollect.

Q: He also notes that you told him you had information that Larson went with Thomasma to the plant of the Miniature Railroad Company at Sturtevant, Illinois to look at the torque wrench and to prove to them that Larson's wrench was better. Do you recall any such thing as that?

A: Not exactly that way. I mentioned something about the Miniature Railroad Company of Glen Ellyn, Illinois in connection with some story that Larson had told about the breakage of one of his wrenches, and something 1442 that Thomasma had told me about how that breakage occurred.

Q: And he notes that also at that conference you claimed to know the code representing letters on two of the wrenches, that you explained that code.

A: I told him that Mr. Thomasma had told me what that code was and had explained it to me.

Q: He also notes that the aluminum castings set forth on sales slips of the Ravenswood Brass Company, while

genuine, supposedly, covered castings other than those for the wrench. Was that discussed?

A. Something along that line. That was one of my points of cross examination of Mr. Schultz who just pulled an invoice out of the air, so to speak, and said that that was it, and he was quite positive of it, notwithstanding the fact that he couldn't tell me what the castings were immediately in the preceding invoices and in the invoices immediately after that.

Q. Then, as Item 11 in Defendants' Exhibit No. 70, the following is noted, and I quote:

"Fidler insisted that Wacker of AMMCO would force this matter out in the open if they were compelled to prove these facts, by taking testimony at Hartford, Conn. 1443 inefficient (apparently Zimmerman's present residence) and elsewhere in the United States at great expense. In that event action for perjury would be insisted, and the case thrown wide open with the axe piercing wherever it would fall."

What about that?

A. I said nothing of that sort at that meeting. I never used the expression about the axe piercing where it falls. I have used the expression, to hew to the line and let the chips fall where they may, but not the other expression, and so far as going to Hartford, Connecticut to prove anything in respect to Larson's story, that would never enter my mind because the only reason for going there was to see Mr. Zimmerman or to take his testimony, which was the priority testimony directly of Zimmerman.

Q. Were you present in the court room when Mr. Alberts testified as to what occurred at the meeting of November 20th in your office?

A. I was.

Q. Mr. Alberts, on page 423 of the record, in testifying as to that meeting, after stating that the usual greetings had been made, that you told him that you were 1444 calling him over as a matter of professional courtesy and that you had a large affidavit, then said: "That he"—meaning you—"had a large affidavit in his possession, which he pointed out, that proved beyond a doubt that Larson was committing perjury, and certain witnesses on behalf of Larson."

Was there any such statement as that made in the November 20th conference?

A. I made no such statement. I showed the affidavit to Mr. Alberts and offered him the right to read it, and he did not care to read it then, and I told him these various things that appeared in it, as told by Thomasma.

Q. Then he continued; still on page 423:

"They knew that I could not have known anything about it, by virtue of my conduct in the deposition and throughout the deposition; and would I like to hear what he had."

Do you recall that testimony?

A. I do.

Q. Was that substantially true, or true, or any part of it?

A. I explained to Mr. Alberts, in telling him that I 1445 was not calling him over there to make any accusations against him, that there were various indications during the taking of the testimony that might cast some reflection on him, and I wasn't in any sense of the word calling him over there to make any accusations against him.

Q. Then Mr. Alberts testified that he stated to you that he was quite embarrassed and was being put in an embarrassing position by Larson, that he wanted to check further.

Is that substantially true?

A. Not that. What he wanted to do was take the matter up with his client and let the client hear the story.

Q. He then testified, on page 424 of the record:

"He—meaning you—pointed out to me numeral characters and the printing on that drawing, which he then told me was a sketch of an abrasive chuck, but that it had no bearing on what I was there for, except to see how similar the characters were on that drawing with those in Exhibit 27."

And then, continuing on page 425, he said:

"I made an examination; I told him that I was convinced they were made by the same parties, and it 1446 looked very much like Larson had given false testimony."

Is that correct?

A. He did not tell me he was convinced. We discussed the matter. I showed to him the Larson drawing and I showed to him the other drawings, and I believe that we did point to some things that to us looked like there was a

similarity, but Mr. Alberts did not tell me that he was convinced that the two drawings were made by the same man.

Q. On page 426 of the record, after testifying that you showed him the drawing, Mr. Alberts testified to the following:

"He"—meaning you—"told me that he wanted me to come to a conclusion as to whether or not Thomasma's statement was correct, with respect to Exhibit 27; and that he thought that to convince me that Thomasma's statement with respect to Exhibit 27 was correct, and that Larson's was false. And I looked at both very carefully, and came to the same conclusion."

Of course, only with reference to what you said, did you tell him, Mr. Alberts, that you wanted him to 1447 be convinced that the Thomasma drawing was the same as Exhibit No. 27?

A. I showed him the drawings, and he could use his own judgment.

Q. And again, on page 427 of the record, Mr. Alberts testified:

"I told Mr. Fidler it certainly looked like they were made by the same person; and that undoubtedly Mr. Larson did not make, or have some high school boy make that Exhibit 27."

Did Mr. Alberts make that statement to you?

A. He did not. May I say, we discussed some similarities, but we did not come to any conclusion or express any conclusions respecting the fact the drawing was or was not made by the same man.

Q. All right. Now, as a result of the meeting of November 20th, a subsequent meeting was arranged, at which time Mr. Alberts wanted to have Mr. Johnson present, is that correct?

A. That is correct, and it was held on November 28th, 1940.

Q. And that meeting was held in your office?

A. That is correct.

1448 Q. And just tell us again who were the parties that were there?

A. Mr. Wacker, Mr.

Q. Give them to us, if you will, as they came in to your office where the conference was held.

A. First Mr. Wacker then Mr. Allen came to my office.

Later Mr. Johnson and Mr. Alberts came, and prior to the time that they came in, Mr. and Mrs. Thomasma had come in to the office and were in another office in our suite.

Referring to the meeting itself, first of all, Mr. Wacker and Mr. Allen came in, then Mr. Alberts and Mr. Johnson, and finally Mr. Thomasma.

Q. How did the meeting break up, what was the order of leaving?

A. Mr. Thomasma left first. Then Mr. Alberts and Mr. Johnson, and finally Mr. Wacker and Mr. Allen.

Q. Just tell us what happened at that meeting, as close as you can, from the very beginning.

A. When Mr. Johnson and Mr. Alberts came in and the greetings and introductions were completed, Mr.—I am not sure—it may have been before the introductions—Mr. Johnson opened up his hands and said to Mr. Allen, I believe directed mainly to Mr. Allen and Wacker, that 1449 he is there with clean hands.

I know that shortly following that statement I challenged it by reviewing the facts that I knew respecting the relationship of Snap-On and Automotive, and Snap-On and Precision and Thomasma in the picture, and I stated that in view of those circumstances I didn't feel that Snap-On was very well circumstanced in the picture or in the situation.

Q. When you Thomasma's situation in the picture what did you mean by that?

A. I mean the fact that Thomasma was our prior employee, that is, Automotive's, prior employee, that he had helped develop the wrench that had been furnished to Snap-On, and he had gone to Snap-On at some time or other to service wrenches and that he, while an employee of Automotive's had gone with Larson and help form Precision, and that he was one of the incorporators of Precision, that he was a stockholder of Precision, and Precision was now making wrenches for Snap-On, according to the information that I had, of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On. When I say "we" I mean Automotive.

1450 Q. What you have just recited, are those the things you said to Mr. Johnson?

A. Yes, I pointed out that whole situation to them.

and because of that I didn't feel—and if you read my letters, from the very beginning, I never did feel that Snap-On was very well circumstanced in that situation.

Q. Confining yourself to the meeting of November 28th, what happened after you had these preliminary discussions?

A. There were some discussions as to whether or not we would merely read the Thomasma affidavit or examine Thomasma or let him tell his story or let him just come in and ramble on and tell his story, or whether we should do it by questions, and so forth, and, as I recollect it, Mr. Alberts suggested that I ask Mr. Thomasma questions, and I did that, bringing out substantially the story that was told by Thomasma to me in his statement or affidavit, and after that I asked Mr. Alberts if he had any questions to ask, and he said that he didn't think that he did, and then he did ask Mr. Thomasma whether he had ever met him before and whether Snap-On knew anything about him in the situation, and I think, as I recollect it, Mr. Thomasma said, "No," to those.

Mr. Johnson said something about he had never heard of this man before, and Mr. Thomasma turned around to Mr. Johnson and said something to the effect that, why, he should know him because he had seen him several times at Snap-On, or something like that. And after that they had heard Thomasma's story, and Mr. Alberts and Mr. Johnson left, and sometime after that Mr. Wacker and Mr. Allen left.

Q. Now, how long did that whole meeting take on November 28th?

A. I think it was around about two hours.

Q. Did you go through all the statements in the Thomasma affidavit in those two hours or just portions of it?

A. No, I didn't take the Thomasma affidavit and put the questions that were in that affidavit. Knowing the story that he had told me, I started from the beginning, his relations with Automotive, and so forth, and brought it up to date, covering, in doing that, substantially the story that was told in the affidavit.

Q. Prior to the time that Mr. Johnson and Mr. Alberts left, was there anything stated by either of them as to future intentions?

A. Yes. Mr. Alberts again referred to the fact that

if this story were true, that adverse interests will have arisen as between Larson, or Precision and Snap On, and that he would have to withdraw as attorney for Larson because his client was mainly Snap-On.

Q. Anything said by Mr. Johnson?

A. Yes. I remember that he remarked something about, if this were the true story, or something, that the whole thing smells to the high heavens.

Q. Is that all that you recall that took place at the November 20th, conference?

A. That is all I recall.

Q. Mr. Fidler, my next questions are based upon Plaintiff's Exhibit No. 13, which was a purported memorandum prepared by Mr. Harry C. Alberts, dated December 18th, 1940, purporting to cover what went on in the meeting of November 28th, 1940. In that memorandum Mr. Alberts notes the following; and I quote:

"The first hour involved a discussion as to whether or not Johnson would admit that Precision was Snap-On and Snap-On was Precision. Unless this was understood, Fidler and Wacker said they would not divulge any information concerning the alleged perjury of Larson and the witnesses in his behalf. We refused to concede this as an understanding and nevertheless Fidler proceeded after a discussion about an hour, to call in Thomasma and interrogate him in a more or less formal manner."

What is the fact with reference to your insistence, if any, that Precision was Snap-On and Snap-On Precision?

A. I didn't so insist. I say that in response to this declaration by Mr. Johnson he was there with clean hands, I stated my position, as I have testified, respecting the circumstances which I didn't feel were so good in respect to Snap-On.

Q. Was there any statement made by you that unless they admitted that you would not divulge any information concerning the alleged perjury of Larson?

A. No, sir, because the purpose of this meeting was to hear that story, in the first instance, and I think that a letter that I wrote to Mr. Alberts or he wrote to me confirming our arrangements shows that to be the fact.

Q. This memorandum prepared by Mr. Alberts further notes:

"After hearing this formal testimony which was 1454 not under oath, but a demonstration of what Thomasmasma would testify to, Alberts stated openly at the conference that he was withdrawing as attorney for Larson in that he was brought into the case through Snap-On and would therefore continue to represent Snap-On in view of the fact that there apparently were charges and counter charges to be made in this case and a conflict of interests might develop between Snap-On and Larson, so that it would be best for Alberts to withdraw."

Is that correct?

A. He did discuss or did mention about adverse interests and that he would or might have to withdraw, but it was predicated upon what he might learn as to the fact respecting the story that he had heard. I don't think that Mr. Alberts or any other attorney would, after hearing that story at that time, conclude or condemn this client.

Q. Was there any discussion at that meeting with reference to a settlement of the case or any proposal of a settlement of the Interference?

A. None whatever.

1455 Q. Was there any discussion regarding concession of priority by one side or the other?

A. No, sir.

Q. Any mention of any idea of settlement at all in that meeting?

A. No, sir. The matter was left just the way I stated it.

Q. Did you hear Mr. Joseph Johnson testify?

A. I did.

Q. I am referring to page 360 of the record, a question directed to Mr. Johnson, and his answer, as follows:

"Question: Did Mr. Alberts say anything about what he was going to do in connection with the Interference?

"Answer: Oh, yes. He did state to Mr. Fidler that in view of the information that we had learned, that we would immediately get in touch with Mr. Larson and that if the facts were substantiated by Mr. Larson that he would grant a concession of priority, or whatever it happened to be, in the Interference proceedings, and also that he would withdraw as attorney for Larson."

1456 Is that statement true, or any part of it?

A. There was no mention of a concession of pri-

ority in that meeting, and the withdrawal by Mr. Alberts was qualified, as I have stated it.

Q. On the same page, in answer to the following question, the following answer was given:

"Question: Did Mr. Fidler make any statement to you or Mr. Alberts or to both of you as you were leaving?

"Answer: Yes, he did. He didn't feel that a concession of priority would satisfy Mr. Wacker, that Mr. Wacker had spent considerable money on tension wrench patents and that unless a satisfactory adjustment was made with him, that he would unleash the dogs."

Any statement like that?

A. No, sir, that is not my language. I never made any such statement as that.

Q. Then, continuing, Mr. Johnson was asked, on page 360 of the record—

A. May I say, when we went into that meeting with Mr. Wacker and these gentlemen, it was with the idea we were not going to threaten anybody and not accuse anybody of anything, but to let them hear this story first hand and let them formulate their own judgment, and in keeping with our original idea, that Mr. Thomasma had given to me, let them hear the story and see if Mr. Alberts has any suggestions.

Q. Then, continuing on page 360 and 361 of the record, and this is after the quotation about unleashing the dogs:

"Question: Mr. Fidler told you that?

"Answer: Yes, sir. He made that statement to Mr. Alberts and myself. He also said that they had discussed the matter with the United States Patent officials and that it was even a matter for the United States District Attorney."

Was there anything stated like that?

A. No, sir.

Q. Had you ever discussed the matter with the United States Patent officials?

A. No, sir, I had not.

Q. Now I am referring to Mr. Alberts' testimony in this case, Mr. Fidler. On page 430 of the record, Mr. Alberts stated, in answer to your statement that you were proceeding on the basis that Snap-On was Precision 1458 and Precision was Snap-On and that you would only give the information providing they agreed to that,

as follows, in answer to the questions that I will read from the transcript:

"Question: What did you say? . . .

"Answer: (This is Mr. Alberts now testifying, page 430) "I said we were here in behalf of Snap-On Tools Corporation, and Snap-On Tools Corporation alone; under no circumstances would I subscribe to that misunderstanding; that that was not true, that never has been true and it was not true now. And I certainly would not even want to continue further under those conditions.

"Question: And then what happened?"

And now, on page 431 of the record:

"Answer: Well, Mr. Fidler was quite shocked that I took that position as abruptly as I had taken it. And he said, 'Well, Snap-On's hands are not too clean in this matter either.' And then Mr. Johnson replied by saying that Snap-On's hands were clean, not only in this matter, but all other dealings; that they had dealt in the past, and would continue in the future to deal on a high plane. 1459 And for a moment nothing was said by anybody.

Finally Mr. Fidler said to Mr. Wacker, 'What shall we do about it?' Or, 'What do you think we should do?' Mr. Wacker replied and said, 'Well, it is up to you.' And Mr. Fidler said, 'Well, you are here now. I told you I would get you the information first hand. I have Mr. Thomasma here. We might as well go ahead with the conference.

What portions of that are true?

A. Well, I know that Mr. Johnson mentioned something about he was there with clean hands. I know he mentioned something about Snap-On doing business on a high plane, but never would I, having called these gentlemen in there, take that position, and I didn't take the position of trying to dickering with them before hearing the story, because that is what they were there for in the first instance.

Q. On page 432 of the record, Mr. Alberts said that it was finally agreed that you were to go ahead and ask the questions of Mr. Thomasma, and then he said, at page 432:

"And if I have anything to add I will ask permission later on to direct some questions to him," meaning 1460 Thomasma. What is the truth of that?

A. He did not have to ask any permission because I extended him the courtesy in the first instance of asking

the questions, and he wanted me to ask them, and I asked him at the end of the conference if he had any questions and, as I stated, he did have a few.

Q. On page 437 of the record, Mr. Alberts further testified that, after you said you were through asking questions, you asked him if he had any questions, and he said he did, and I quote:

"So I examined Thomasma on what he had known about Snap-On Tools Corporation, and about myself; if he was the inventor of this, why didn't he come in to see me. He replied by saying that Larson and Carlsen refused to allow him to come and see me; that he wanted to come and see me, but they absolutely prohibited him from coming to see me."

Is that correct?

A. No, there was no discussion of that kind.

Q. Continuing, and I am reading now from page 434 of the record:

"I asked him if he had gone to Snap-On Tools Corporation about this matter. He said that he had accompanied Larson to the plant at one time but did not go in, at the insistence of Mr. Larson. I asked him if he had met Mr. Joe Johnson then; he said no."

Is that true?

A. That he met Mr. Johnson?

Q. Would you like to have me read it again?

A. Just the last sentence.

Q. "I asked him if he had met Mr. Joe Johnson then and he said no."

A. Well, the conversation just prior to that, I have no recollection of anything like that, and I don't think it occurred, because the only discussion with Thomasma was about his contact or knowledge of whether or not he knew Mr. Alberts and Snap-On and, as I recall it, Mr. Johnson raised the question whether or not Thomasma knew him, and that is when Thomasma turned around and said he should know him, that he had been to Snap-On and had seen him several times.

Q. Mr. Alberts then continued:

"I asked him" (meaning Thomasma) "why he did not come to see me, if he was the inventor he should have told me about this invention, and I could then have prepared the application in his name, if he was the inventor; that was the proper way of doing. He said that

Larson and Carlsen insisted if I knew that any ex-employee of Precision was connected with Snap-On, they would cancel the contract. That was the thing they could not afford to have happen, and they knew that neither I nor Snap-On Tools Corporation would stand for Thomasma's connection with Precision."

Any such conversation or questions and answers?

A. No, nothing like that.

Q. Continuing further, Mr. Alberts testified, on page 434:

"Answer: Well, we got our coats and hats; we stood up and were about to leave, when I made the statement to Mr. Fidler that under all of the circumstances that were presented to me at that hearing, that I would withdraw as attorney for Larson, that I would recommend to Snap-On Tools Corporation that they consent to Larson conceding priority of invention to Zimmermann; that they would use their influence on Larson to see that that was done; 1463 that I saw no other way out of it."

What is the truth of that?

A. No, there was nothing like that happened.

Q. Mr. Alberts further testified, on page 436:

"Answer: I told Mr. Fidler that I would be willing to have Snap-On consent to a concession of priority; and upon my recommendation I knew that whatever I recommended would be acceptable to Snap-On; and I knew that whatever Snap-On insisted of Larson, he would do."

Anything about that?

A. Nothing like that. The first time that I ever heard of a concession of priority in the matter was when Mr. Hobbs came to my home on December 2nd, 1940.

Q. Still reading from Mr. Alberts' testimony, page 437 of the record:

"Answer: Mr. Fidler came up to Mr. Johnson and myself and told me that Mr. Wacker had spent over five thousand dollars investigating Larson and his associates; that a concession of priority alone would not satisfy him; that not only would it not satisfy him, that this matter had to be settled to the satisfaction of Mr. Wacker, and set 1474 tled promptly, or else Mr. Wacker would instruct him to unleash the dogs."

A. Nothing like that was said at that meeting.

Q. And I am still quoting:

"And he continued by saying that he had already talked

to the Patent Office officials, and that if Mr. Wacker was compelled to go to Hartford to prove his case, and to go through with this thing at the additional expense, that he certainly would have to go to the District Attorney with this matter.

What about that?

A. As I previously explained, that was not stated at that meeting.

Q. On page 438 of the record, Mr. Albert testified, with reference to the fact that Mr. Zimmerman lived in Hartford:

"And Mr. Fidler and Mr. Wacker got into a discussion as to the merits of Mr. Zimmerman as an engineer."

A. No. Mr. Wacker would never do that.

Q. Did you do that?

A. No, sir.

1465 Q. And, continuing on page 438 of the record, in answer to this question:

"Question: And what happened after Mr. Fidler made the statement to you that concession would not be satisfactory; what did you tell him, or how did you part company with Mr. Fidler?"

Mr. Alberts answered:

"Answer: Well, I couldn't say very much as to that; I told him that he would hear from me or Larson, or some attorney in behalf of Larson; he certainly would hear from me on behalf of Snap-On Tools Corporation; from there on I was representing Snap-On Tools Corporation, and Snap-On Tools Corporation alone; and Mr. Larson would have to get another attorney, and he would undoubtedly hear from his attorney."

Was there anything said like that?

A. Nothing was said with respect to hearing from any other attorney for Larson, or anything like that. Mr. Alberts may have mentioned the fact to me that I would hear from him later, but nothing about another attorney.

Q. Now, on page 448 of the record the following 1466 question was put to Mr. Alberts and he made the following answer:

"Question: Coming back to this conference at Mr. Fidler's office, was there any mention of suspicion by any of the people there on behalf of Automotive?"

"Answer: No mention—no word like 'suspicion' was used. As far as I could gather, it was all out and dried,

and as far as Fidler was concerned he let me know he had the goods and he expected to deliver the goods. That is the way it was put to me at both of our conferences."

And when he said "both conferences" he testified on the same page that he meant November 20th and November 28th.

What is the fact as to that?

A. That is not true, because it was not cut and dried, and I gave no one and intended to give no one the impression that it was cut and dried. I was merely laying open to his inspection for his own decision the information that I had.

Q. What was the next thing that happened in connection with this case, Mr. Fidler, after the meeting of 1467 November 28th, 1940?

A. Well, I remember that I sat with my back to an open window in my office when I examined Mr. Thomasma, and the result of which was an attack, a recurrence of an attack of my back that put me out, and I was home ill from the beginning—the 29th until December 9th, 1940, and while I was home ill my secretary, I believe, informed me of a letter that had been received from Mr. Hobbs, and as a result of that arrangements were made for Mr. Hobbs to come out to my home and see me on December 2nd, which he, accompanied by Mr. Edward Haight, did.

Q. Who was present at the conference at your home on December 2nd, just the three of you?

A. That is right.

Q. Hobbs, Haight and yourself?

A. That is right.

Q. Tell us just what the conversation was at that time.

A. I can't recall the direct words.

Q. Give us the substance of it.

A. But I know that we exchanged greetings with each other, and they did discuss my home. I was then in my den, on a daybed, and then Mr. Hobbs told me that he had come into the matter for the purpose of settlement 1468 of the Interference, if possible; that he had a proposition to make, and he didn't get very far until I tried to tell him the things in my mind, the story about Thomasma, the facts set forth in the affidavit and testimony, but he stopped me and said that he didn't want to discuss that and wouldn't discuss that, that he hadn't

looked into the testimony or the affidavit or any of those things and he was there merely to make a proposition of settlement.

He then proceeded to make me the proposition which is set forth in my letter to him of December 6th, 1940.

1469 Q. Mr. Fidler, do you recall that just before we adjourned last night we had discussed the fact that Mr. Hobbs and Mr. Haight had come to your home on December 2nd and conferred with you at that time.

A. Yes.

Q. Do you recall whether or not we completed the testimony as to what happened in that conference at your home?

A. I am not certain. I think I was getting my recollection.

Q. With the Court's permission would you tell us again what it was that was said at this conference of December 2nd?

A. I can't recollect everything that was said.

Q. Give us the substance.

A. But the substance of it, we exchanged greetings and there was some discussion about my home. I was at that time in my den lying on a daybed, and Mr. Hobbs explained that he was there in connection with an attempt to settle the interference, and I began to try to tell him something about the matter, and he said he didn't want to hear anything about it, didn't want to discuss that, he hadn't read the testimony or the Thomasma affidavit or didn't know anything about those things. And I believe he said something to the effect that he was going on the basis that everybody was wrong in the picture and that they wanted to settle, and he proposed to me the giving of a concession of priority and other things that were set forth in the letter that I wrote to him on December 6th, 1940.

At that time I believe that I mentioned something about the relationship of Snap-On and the parties in this situation, that Mr. Wacker was inquiring of me or pressing me with respect to some possible damage to him. As he looked at it, he didn't see how a man could work for him and help develop the wrench and then go over to Precision and help work out a wrench there which in turn would be sold to his customer Snap-On without him being damaged some way, and I don't remember what was said along that

line, whether I went into great detail or not, but my impression is that that is correct, and it is indicated to me by the first paragraph of the letter that I 1471 wrote to Mr. Hobbs on December 6th.

Q. Is that all of your recollection as to what happened at that meeting?

A. Yes.

Q. What is the fact as to whether this was the first mention or approach to the question of settlement by any of the parties involved in the entire Larson Zimmerman Interference?

A. It was.

Q. Had there been any previous mention by anybody in any of the conferences in which you took part as to any possible terms of settlement or any theory of settlement or any idea of settlement?

A. None whatever.

Q. Around this time, and I mean December 2, 1940, did you confer with anyone not connected with the case, with reference to the situation which you then found yourself faced with?

A. After Mr. Hobbs had been to my home I talked to Mr. Wacker and told him the general substance of our conversation, and Mr. Wacker immediately came back again, at me with the idea, didn't he have some recourse for damages in this matter? And he had had that 1472 impression for a long time, and maybe I had given it to him in being a little too outspoken maybe in my prior letters, but I had always told him that I was concerned only with the Patent law and that I thought that other matters had to do with the general law question and that he should take that up with his own general attorney.

Well, that started the activity of his mind again, after this conference of mine with Mr. Hobbs, and he pressed me again in that respect and I again suggested that he take the matter up with his general attorney, and he said he would do so, and he informed me that he was getting in touch with Mr. David Dunbar of the firm of Dunbar and Rich.

On December 7th, 1940, Mr. Dunbar called me, as I understood it, from his home, and said he had talked to Mr. Wacker and he wanted me to go over the situation with him and acquaint him with it. Wacker had given him some of the facts. So I reviewed the general situation.

Q. When you "reviewed the general situation" what do you mean, Mr. Eidler?

A. I mean the relationship of these parties, that is, Snap-On's connection with Automotive, and Thomasma's connection with Automotive, and his forming of the 1473 Precision Instrument Manufacturing Company while he was still an employee of Automotive's and the making of a wrench which was very similar to Automotive's wrench that they had been supplying to Snap-On, and the fact that Thomasma had worked with Mr. Zimmerman in the development of that wrench, and I also explained to him the fact that I had had an investigation made in the matter and that those facts were developed and that I had secured from Thomasma a statement which was contradictory to testimony given by Larson and his witnesses.

I explained that Mr. Larson and eight or nine witnesses had testified to a rather straightforward story, and I asked him what I should do in the matter, whether I was in any position at that time to pursue the matter further.

Q. "Pursue the matter further"? What did you say?

A. That is, with regard to turning it over to the authorities or—I was asking him, in a sense what Automotive's obligations or liabilities in the matter might be. I didn't want to do anything that might involve them or me in any kind of a damage suit whatever. My views in the matter were, as I had been previously advised, not to do anything until you have positive proof of it, because when you start something like that you can't stop it and it might involve you in difficulties if you couldn't prove it.

Q. What was Mr. David Dunbar's response?

A. He advised me that we were in no position to assert any conspiracy or have any action for civil damages at that time because we hadn't proved anything definitely. All we had was rumors to go upon. He said that I was not in the position to pursue the matter with respect to the authorities because I had only Thomasma's word for the matter, and that Mr. Thomasma was a disloyal or disgruntled employee and that he was being kicked around by Precision, and that he wouldn't believe his word under oath.

Q. Was that the extent of your conference with Mr. Dunbar?

A. No. The matter of civil damages and also reference to the authorities, those two matters were discussed together, and I have a recollection that he said that it might be construed also that we were trying to use the authorities as a means of force, or something like that. I don't remember just exactly what his advice was, but there was something to that effect.

1475 Q. When did Mr. Harry Lindsey, your partner, begin to take active interest in this Larson-Zimmerman Interference?

A. I returned to the office from my illness on December 9th and I was still in pretty bad shape, but I could move around and I was all taped up, but I still was in considerable pain, and I didn't know whether I would be able to carry on or not. So I called in Mr. Lindsey, as I have done numerous times. We had worked close together in various matters and I asked him to enter into the negotiation matter of settlement, because I didn't know whether I could carry on or not in the matter.

Q. What is the fact as to whether from that time on Mr. Lindsey remained active in the negotiations which were ultimately concluded by the settlement?

A. He did.

Q. And did you participate in some of the conferences and some of the correspondence along with Mr. Lindsey or in addition to Mr. Lindsey?

A. I did, with Mr. Lindsey.

Q. You heard Mr. Lindsey testify here at length?

A. Yes.

Q. With reference to those conferences with Mr. 1476 Lindsey testified he had with either Attorney Aberts or Attorney Hobbs or both, could you add anything to the testimony that he gave as to the conferences which he had with either one of those gentlemen in which you sat also?

A. Or the sequence of events.

Q. Yes, and the order of procedure and the order of the conferences, and so forth.

A. It is very difficult for me to correlate those matters. I know that on December 9th I talked to Mr. Hobbs on the telephone and I think at that time that I told him Automotive required 10 per cent royalty instead of the 3 per cent that he had suggested.

Then, on December 11th, two days later, we had not

heard anything from anyone in this matter, and there was some kind of an Automotive Parts Show or something on in Chicago, and Mr. Wacker had a large suite of rooms at the Blackstone. He was receiving and entertaining various officials of different concerns. I think that he was president of that association at that time, and Mr. Lindsey and I went up to the Blackstone to confer with him and Mr. Wacker. I remember, was quite impatient about the matter because he hadn't heard anything, and I think there 1477 is where Mr. Lindsey had a telephone conversation with Mr. Hobbs—I wasn't present nor was Mr. Wacker—at which time Mr. Lindsey informed me that Mr. Hobbs had hung up on him. Mr. Lindsey was quite incensed at the whole thing. We went back to the office—I don't know whether I am right or not—but my best recollection is that after we went back that memorandum as to terms, the twenty-four hour matter, was dictated, and I believe that a copy or the original of that was sent up to the Blackstone to Mr. Wacker. But nothing came of that because somewhere there Mr. Lindsey either called Mr. Hobbs or Mr. Hobbs called Mr. Lindsey and the whole thing was back, forgetting about that twenty-four hour matter, and there was arranged a conference with Mr. Hobbs at the Union League Club the next day.

I do not recollect Mr. Lindsey's testimony in that respect, but that is my recollection of the sequence of events in there, and I think so far as the other events were all concerned, that my recollection agrees with Mr. Lindsey's exactly.

Q. Do you have anything to add to what Mr. Lindsey said regarding what happened in the various conferences in which you also sat with Mr. Lindsey?

A. Well, question has arisen as to how these other 1478 agreements got into motion, how they got started, where they entered the picture, and I have a recollection on that. I don't think Mr. Lindsey went into that. Whether you want me to relate that—

Q. Do you mean as to who prepared the original proposals, written proposals, and so forth?

A. Yes.

Q. Mr. Lindsey points out you used the word "motion". Do you mean motion or agreements?

A. I mean the start of the thing, how they started, and I was referring to agreements.

Q. Do you recall a meeting at the time the negotiations were going on, December 13, 1940, between Mr. Hobbs and Mr. Alberts and you and Mr. Lindsey?

A. Yes.

Q. I am now reading from Mr. Alberts' direct testimony in this case, page 463 of the record, in which Mr. Alberts testified:

"Well, a statement was made in that conference that I didn't quite understand, and it appeared to me that I wasn't in on everything. And after I left I said to Mr.

Hobbs, 'What did Mr. Fidler mean by "done away with"?' And he said, 'If the matter was settled everything would be done away with.' I said apparently he had some conversations that I wasn't in on, and he admitted that he had lunch with him several times or at least one time that I wasn't present, and I knew nothing about it, that they had some conference I knew nothing about, that he didn't report to me. I thought it was all right. I thought he should explain it to me. He said—"meaning Mr. Hobbs in this case—" "Well, frankly, there is a tentative understanding submitted by Mr. Fidler that if the settlement goes through or if a settlement goes through all the parties would have a bonfire of all the existing records and that would be the end of it."

Now, during the conference of December 13th, had there been any mention of the word "bonfire"?

A. No.

Q. Had there been any mention either directly or indirectly of disposing of any of the existing records in the case?

A. No.

Q. Up to that time had anybody—Mr. Alberts, Mr. Lindsey or you or anybody else in connection with this case—ever discussed the idea of disposing of evidence, of the destruction or suppression or hiding of it, or anything of that kind?

A. No.

Q. In any of the subsequent negotiations which ultimately led to this settlement, was there any discussion of such matters as bonfires or suppression of evidence?

A. No.

Q. Had anybody ever advanced any such idea during any of the conferences?

A. No.

Q. During any of the conferences in which you took part from the inception of this case to the end of it, through settlement, what is the fact as to whether there was ever any offer made by you or by Mr. Lindsey in your presence or by any other attorney or agent of Automotive in your presence not to prosecute Larson or any of his witnesses if a settlement was made?

A. Nothing like that.

Q. Was any such idea ever advanced by anyone else than Mr. Lindsey and yourself in your hearing?

A. No.

1481 Q. What is the fact as to whether anyone ever asked you or Mr. Lindsey or anyone else in your presence to make a promise to that effect?

A. No one.

Q. Up to the time that the settlement was concluded and the documents exchanged on December 24, 1940, had it ever been reported to you that Larson and Carlsen had admitted perjury to Attorney Alberts or Mr. Joe Johnson?

A. No.

Q. What is the fact as to whether you were ever advised that Larson and Carlson or any of Larson's or Carlson's witnesses in the Interference had ever admitted perjury to anyone up to the time the settlement was made?

A. Up to the time of the settlement?

Q. Yes.

A. I was never so advised.

Q. When did you first learn that Larson and Carlsen, or at least Larson, had admitted to Mr. Alberts and Mr. Joe Johnson that they had committed perjury in the Interference testimony?

A. When the Third Amended Petition was filed 1482 by Snap-On in this case, there was the positive allegation to that effect, which I took as information in that respect. But Mr. Lindsey and yourself didn't so consider it, and for that reason we held before his Honor, Judge Igée, a session in which we took Mr. Larson's testimony for discovery, in which he admitted that was the first time he positively admitted he had committed perjury.

Q. And is that the first time that you knew that he had admitted his perjury to Attorney Alberts and Joe Johnson?

A. That is correct.

Q. With reference to the settlement negotiations only, who represented Larson and Precision Manufacturing Company throughout the entire negotiations for the settlement?

A. Mr. Hobbs.

Q. Did Mr. Haight appear in the picture other than at that conference at your home on December 2nd?

A. So far as I knew, he did not.

Q. And during those settlement negotiations Attorney Alberts represented Snap-On, is that correct?

A. That is correct.

Q. Do you know anything about the letter of December 19th, 1940, which Mr. Harry Lindsey wrote to Mr. Alberts?

1483 A. I think that, as I recollect it, Mr. Lindsey, I believe dictated it in my presence, and I subscribed to it in the sense that I did not criticize it, and it went out with my approval.

Q. There was a notice served to take Interference testimony on behalf of Automotive sometime in the middle of December, 1940, is that correct?

A. That is right.

Q. And did you partake in the serving of that notice or was that done by Mr. Lindsey?

A. I knew it was going to be served and I think I furnished to him the information contained

Q. Do you mean the names of the persons whose testimony was to be taken?

A. That is correct.

Q. Would you find in your file the notice which you caused to be prepared at that time?

A. Yes, I have it here.

Q. Who was the first person designated in that notice?

A. Mr. Thomas Raftery.

Q. Will you tell us why Mr. Raftery was selected to have his deposition taken in that case?

A. We served on him a subpoena duces tecum in 1484 which he was to produce the record that he had taken to date respecting the witnesses testifying on behalf of Larson, and I believe that in addition to that I intended to examine him also about the inaccuracies in the Ford deposition.

Q. What was that inaccuracy? That has been mentioned several times.

A. The fact that he had not transcribed the curse words used by Ford.

Q. Who was the second person designated?

A. Mr. Herbert J. Schmid of our office. He had assisted me in the taking of the testimony at Mr. Alberts' office, and he knew the witnesses that had testified, and I was going to inquire of him as to the proceedings over there in general, the matter of instruction of witnesses not to answer, and Mr. Carlsen's testimony had not been transcribed and about his refusal to answer certain questions in general, about the conduct of the testimony that was taken. I am not casting any reflection on Mr. Alberts in that respect, but I mean just the general mode of taking the testimony and the exhibits produced, and so forth.

Q. Who was the next person?

1485. A. Mrs. Alice Larson, who was the wife of Mr. Kenneth Larson. There had been a lot of testimony by Mr. Larson respecting his early work and a lot of tests that were carried out in his basement, a lot of equipment down there for testing, and Mr. Whitaker and Mr. Hymes, I believe, had testified about calling there at a certain time on a certain Labor Day or something like that, and I was going to inquire of Mrs. Larson as to those facts and to find out from her whether or not it was in fact at the early date or the later date in 1938 that these things transpired.

Q. Who was the next witness?

A. The next was myself, and I was going to testify in part to the proceedings and the taking of testimony, and also at the same time, not wanting to appear twice in the case, I was going to testify as to what I knew about the dates alleged in the Zimmerman preliminary statement. It has always been my practice to preserve my drafts of specifications, rough drafts which bear a date, and I have invariably used those as evidence of disclosure and first written description of the invention where there is no earlier written description by the inventor.

1486. And then Mrs. Hattie Carlsen was the last witness, and Mr. Carlsen had testified that he had met Mr. Larson in 1934, whereas Mr. Thomasma stated that Mrs. Thomasma—and Mrs. Thomasma verified that—had introduced Mrs. Carlsen to Mr. Larson in the fall of 1933. I wanted to check that fact through Mrs. Carlsen, and that is the reason she was named as a witness.

Q. The testimony of those persons was never taken, is that correct?

A. Never taken.

Q. Shortly after the notice of taking of that testimony was served, negotiations reopened up for settlement, is that correct?

A. That is correct.

Q. No hearing was ever had as a result of that notice?

A. That is correct.

Q. There has been some testimony here as to the purchase of 260 shares of stock for the sum of \$500 from Mr. Thomasma. Can you tell us how that entered into the picture and what was done about it?

A. I think, as I recollect, Mr. Hobbs in his letter of December 6th to me, 1940, predicated his proposition upon return to Precision of the Thomasma stock or our 1487 and in securing or returning that stock to Precision, and that was kept in mind in connection with all of the negotiations. And when the agreement was finally made there was paid to Automotive \$500, and that \$500 was turned over to Mr. Thomasma if he would deliver to us the stock that he owned in Precision, which stock was to be turned over to Mr. Hobbs for delivery to Precision, so that Mr. Thomasma would be out of the matter so far as Precision was concerned.

That was all taken care of prior to the time of the delivery of the signed agreements to the respective parties on December 24th. In other words, that was a part of the final termination of the matter and, for that reason and to be able to do that, I contacted Mr. Thomasma and secured that stock before we had received from Snap-On or Precision the \$500, giving to him, as I recollect it, our firm check and, refreshing my recollection from my correspondence, I believe that Automotive gave me or sent Snap-On's or Precision's check to Automotive, and they endorsed it and sent it back to us so that we would be reimbursed promptly and would not have to carry that out of pocket expense for Mr. Wacker.

Q. On December 26th, 1940 you wrote a letter to 1488 Mr. Bafferty, the Court Reporter, requesting that he turn over certain documents in his possession, or certain testimony and notes to Mr. Alberts. What was the purpose of that letter and why was it written?

A. Well, it was understood that that would be done.

Q. Understood when, where and by whom?

A. I don't know exactly when it was understood, but between the respective parties that were in the negotiations towards settlement. Mr. Hobbs had insisted on the preservation of all the records—I don't know what his reasons back of that were. And we were insistent on preserving all records for reasons which we had in our mind.

Q. What were the reasons you had in your mind?

A. Because we well knew that in the event of any suit against the third party in respect to these patents, that there would be disclosed to anyone defending that suit the Interference situation, and that Larson had been set up as an inventor as of an early date, and we wanted all of the records preserved so that we would not have to start all over again with investigations in the event, after several years time, that defense would be brought forward.

1489 Another reason was that only part of the testimony had been transcribed, and that included the testimony of Mr. Carlsen, who was one of the main corroborative witnesses of Mr. Larson. And the Reporter's note books therefore were necessary in order to preserve the complete picture, and it was my understanding, and I think it was the understanding of everyone, that a Reporter does not keep those note books permanently, and he might destroy them, and for that reason, in order to insure the preservation of these matters, they were turned over to Mr. Alberts. In other words, that was Mr. Alberts' responsibility. He had retained the Reporter, the testimony had not been transcribed, and we thought that he would be the proper one to preserve those books.

Q. Was it ever reported to you by either Mr. Raftery or Mr. Alberts that Mr. Raftery had in fact turned over all or any part of the material which was requested be turn over?

A. Not at that time. I just presumed that it had been carried out.

Q. Particular attention has been drawn in this record to the fact that in your letter of December 31, 1940 to Mr. Hobbs, which has been introduced in evidence, you 1490 stated among other things:

"As to the testimony and Thomasma's statement matters, I am holding everything subject to your call."

What was meant by that statement in that letter by you?

A. That I was preserving those matters and that they would be held subject to his inspection whenever he wanted to see them. He had said that he wanted them preserved, and I had—no one else had the Thomasma affidavit, the original or copy, and I assured him that it would be held subject to his inspection or call or the inspection of anyone that wanted to see them, and they were so held, and shortly after the filing of this suit Mr. Ooms was informed that there was such an affidavit and I very gladly told him that I had it, and I did let him see it, and he did look at it. There wasn't any question about it.

Q. And in connection with that Thomasma affidavit, there was some testimony introduced in this record as to certain corrections that Thomasma wanted to make or you wanted to make or somebody wanted to make. What is the fact about that?

1491 A. There were some corrections, but they were immaterial things, and the reason that I had him read that at that time was because there were some allegations in the Third Amended Petition to the effect that we had improperly issued or taken out, or that I had improperly presented the Larson Application as being—no, in that the facts showed that Thomasma was the inventor; whereas that was contrary to the fact, because I understood that Larson was the inventor of the particular things that were claimed in this case. I wanted Mr. Thomasma to read that statement again to see whether or not he had any change to make in those statements with respect to anything, including—I didn't tell him the matter of inventorship which he had attributed to Mr. Larson. It was merely a check in that respect; and in going through it he found some typographical matters that he wanted to correct, and instead of correcting them on the affidavit, I told him to tell me what they were, and a memorandum was prepared stating what they were, and I think that is in evidence here.

Q. Talking about the preservation of documents and files, there has been some reference made here, I believe, in Mr. Alberts' testimony that you at that time made
1492 a statement that you had searched for a drawing and had been unable to find it. What drawing was that and how did it enter the picture?

A. That drawing was the one which I submitted to Mr. Salmon on the evening of November 27th when he said

that he required farther material: It was a drawing of a device similar to the drawing that I had previously submitted to him, except my recollection of it is that it was an assembly drawing showing stone or abrasive carriers mounted by springs or leaf springs to a body of the same type as shown in the drawing that was originally submitted to Mr. Salmon.

I have made every effort to find that drawing. I have had Mr. Thomasma search all of his files, because my recollection is that I returned all drawings that I had to Mr. Thomasma, and I have been unable to find it.

Q. That drawing did not cover any of the subject matter in the Larson-Zimmerman Interference?

A. No, it was a cylinder surfacing hone or tool.

Q. And used for the matter of comparison, on November 27th when Mr. Salmon was in your office?

A. It was used for that purpose? yes.

Q. Had you ever shown that drawing to Mr. Al-1493 berts at any time during the conference with him?

A. No. The drawing I showed to Mr. Alberts is the drawing which is in evidence here as Plaintiff's Exhibit or Defendants' Exhibit—

Mr. Freeman: 22.

The Witness: 22.

Mr. Smith: Q. 22. How can you be certain that the drawing you showed to Mr. Alberts that Mr. Alberts testified about, was not that drawing?

A. When Mr. Thomasma came in to see me and brought these drawings, he had worked up various ideas in regard to devices of Automotive with which he was quite familiar, and he brought in drawings to me, and one of the drawings that he brought in to me was this particular drawing, Exhibit No. 22, which I witnessed on November 8th, 1940. I did that because I was attorney for Automotive, and I didn't want anything to come up that might involve an embarrassing situation between Thomasma and Automotive because of his submitting to me an invention or tool or something that he considered an invention of that kind. Mr. Thomasma had his name signed on the drawing and I signed mine. When we were getting ready for this conference with Mr. Alberts, I didn't want to do anything—

1494 Q. What conference?

A. November 29th, 1940. I didn't want to do

anything that might prejudice him or lead him in any way, and I had my secretary, Miss Johnson, cut off the bottom of that drawing which bore the signatures and the dates, and make an affidavit to the effect that she did so cut off the drawing at that time, and it was particularly for the purpose of showing it to Mr. Alberts.

1495 Q. Now, at the risk of repetition, Mr. Fidler, what is the fact as to whether you or your firm have preserved everything that was involved in the Larson-Zimmerman Interference hearings or in the negotiations which led to the settlement or that had anything to do with this case?

A. We have.

Q. Has anyone ever requested of you that you dispose of any of those papers by destruction or hiding or anything of that kind?

A. No, sir.

Q. And since the inception of this case in which we are now involved, those papers have remained open to inspection by all parties involved in this case?

A. That is right.

Q. And, as a matter of fact, on our side of the case we have made many requests, both to Mr. Hobbs and Mr. Alberts and Mr. Ooms, and others involved in the case, for the production of certain documents and what is the fact as to whether or not all or almost all of those documents have been produced?

A. We have produced what they requested.

Q. And they have produced what we requested?

1496 A. I think so except I think there were two or three memoranda which Mr. Alberts later produced in connection with his pretrial deposition.

Q. And at the request of either Mr. Ooms or Mr. Freeman, you caused a search to be made at the plant of Automotive with reference to such files as they might have in this case, is that correct?

A. That is correct.

Q. What is the fact as to whether such files were found, produced and open for inspection?

A. They were found and produced and the material they requested was produced.

Q. Now, in so far as your handling of this case is concerned, from its very beginning and in connection with the investigation conducted by the various parties of each

other's files in this case, have you found any documents to be missing which should have been in anyone's files?

A. No, I have not.

Q. On your pretrial deposition, Mr. Fidler, do you recall being asked this question:

"Q. Do you recall informing Mr. Alberts that the aluminum castings set forth in the sales slip of the 1497 Ravenswood-Brass Foundry Company, while genuine, supposedly, covered castings other than those for the wrench which was involved in the Interference?"

A. I think I do recollect that.

Q. I am referring to Page 65 of your pretrial deposition and just ask you to read the one question and ask you if that refreshes your recollection as to whether or not that question was asked you at that time.

(Handing document to witness.)

A. Yes, it was asked.

Q. Now, in Mr. Freeman's interrogatories of Mr. Lindsey yesterday, Mr. Freeman asked Mr. Lindsey about the suggestion that the second Larson application be assigned to Automotive and Mr. Lindsey answered that you were more familiar with this matter.

Can you explain what Mr. Lindsey was unable to explain in answer to that question?

A. Yes.

Q. Go ahead.

A. During the motion period in the Interference, I attempted to bring in claims directed to the feature of a resilient or flexible connection for operating the gauge 1498 mechanism of the wrench. I did that with respect to the particular Larson application involved directly in the Interference in view of a disclosure to that effect in one of the Zimmerman applications involved and the Patent Office held that that subject matter should not be brought into the Interference because it was not disclosed in the Larson application directly involved in the Interference.

Later on, during the taking of testimony on behalf of Larson, it was either developed through the witnesses or Mr. Alberts showed to me, a wrench in which Precision or Snap-On was using that flexible connection; it was the same, exactly the same type of wrench, as that which was involved in the Interference except for that flexible connection, as I recollect it.

And then I was much impressed with the fact because

whereas it was the duty of Snap-On or Precision or Larson, or whoever it was that had this application, to bring that into the Interference, particularly after I had injected the matter, nothing had been done about it and it was held out.

And that was known to me at the time of the negotiations and when we began to look around for some 1499 thing or some consideration in lieu of the ten-per-cent royalty, I knew about that and suggested that that application which was directed to the subject matter which was involved in Interference, because I had brought it in under a motion in the Interference, he included and that is the reason it was brought in.

Mr. Smith: At this time, if your Honor please, I offer in evidence as Plaintiff's Exhibit 60, a letter addressed by Mr. Fred G. Wacker to Davis, Lindsey, Smith & Shonts under date of June 3, 1940.

As Plaintiff's Exhibit 61, a letter addressed on the letterhead of Davis, Lindsey, Smith & Shonts, by Mr. R. E. Fidler, to Automotive Maintenance Machinery Co. under date of May 31, 1940.

And, as Plaintiff's Exhibit 61-A, a document which is attached to and part of Plaintiff's Exhibit 61.

I have shown these to Mr. Freeman and I understand there is no objection.

Mr. Freeman: Subject to correction for error of the Patent Office document, this being merely a typewritten copy.

Mr. Smith: That is correct and we will, of course, allow Mr. Freeman any check on that he wishes.

1500 (Such documents, were thereupon received in evidence by the court, and marked, respectively, as PLAINTIFF'S EXHIBITS NOS. 60, 61 and 61-A.)

Mr. Freeman: I might say in the meantime, in cross-examination, we will merely state that the motion was denied by the Patent Office.

Mr. Smith: Maybe I had better find out.

Q. Can you answer Mr. Freeman on that last statement that the motion was denied, the motion being 61-A?

A: That was, as I understand it, a motion by Mr. Alberts to get back into the Interference with respect to a claim which he had failed to make as a result of the motions in the Interference and the Patent Office denied that motion on the ground that his failure to make resulted or

amounted to a disclaimer of the invention set forth in the claims.

Mr. Smith: That is all.

1501

Cross-Examination by Mr. Freeman.

Q. Mr. Fidler, did you get a written opinion from Mr. Dunbar?

A. I did not.

Q. And, Mr. Fidler, did you give Mr. Dunbar any written memorandum or a statement of facts upon which you wanted him to predicate an opinion?

A. I did not.

Q. Was this information you gave him in personal conference?

A. It was over the telephone.

Q. Then Mr. Dunbar didn't have the advantage of the 84 page affidavit of Thomasma, did he?

A. No, I merely gave to him the highlights, as you have called them, of that story, the contradictory—the points of contradiction between the Larson story and the Thomasma affidavit.

Q. As told by you to Mr. Dunbar?

A. That is right.

Q. So, whatever Mr. Dunbar told you, it was in response to what you told him?

A. That is correct.

1502 Q. And you had been in this case for some two years; is that correct?

A. Well, the Interference was declared in October, 1939.

Q. The application was filed in 1938?

A. In 1937.

Q. And the conference you had with Mr. Dunbar on the telephone was in December of 1940?

A. That is correct.

Q. And you endeavored to give him the information with respect to your meeting of November 3d at your home?

A. No, I don't think that I mentioned that.

Q. You really didn't expect an opinion from Mr. Dunbar under circumstances of that kind, did you?

A. I really did because I was on the flat of my back at my home and I was trying to conduct business against

the orders of a doctor because I was trying to do everything to facilitate the clearing up of the matter, if possible.

Q. And right at the time you gave Mr. Dunbar the information, expecting an opinion from him, you had had the interview with Mr. Hobbs and Mr. Haight and 1503 you were then in the midst of discussing settlement, were you not?

A. No, I had had the interview with Mr. Hobbs and Mr. Haight and I had written to Mr. Haight on December 6th but that was all the discussion of settlement.

Mr. Lindsey: You mean you wrote to Mr. Hobbs?

The Witness: I wrote to Mr. Hobbs on December 6, 1940.

Mr. Freeman: Q. Well, Mr. Hobbs came out to your home to talk settlement, did he not?

A. That is correct.

Q. And when you wrote him on December 6th, you wrote him in the spirit of settlement, did you not?

A. Yes.

Q. And then when you asked for an opinion from Mr. Dunbar, that came afterwards?

A. That is correct.

Q. When were you informed that Mr. Thomasma had disclosed to Mr. Larson the ~~x~~ which in question which was the subject matter of the Larson application for patent, which disclosure was made in the basement of the home of Thomasma?

A. I think you have an undated memorandum that 1504 I turned over to you in this matter in which reference is made to that fact. I am not certain when that memorandum was prepared nor am I certain when I secured that information but that information, as I recollect it, came from or through the investigators for the first time.

Q. And the memorandum you have just referred to is dated September 17, 1940, and is Page 6 of Defendants' Exhibit 13, is that correct?

The Witness: May I have the previous question?

(The previous question was read as hereinbefore recorded.)

The Witness: A. According to this, it must have been by September 17, 1940, in a round-about way through a Mrs. Ryan who was one of the stockholders, I believe, or was informed on Precision.

Mr. Freeman: Q. Had you ever interviewed Mrs. Ryan?

A. No.

Q. Did you ever talk to Mrs. Thomasma about September 17th after you had received information from your investigators to the effect that Thomasma and not Larson was the inventor or the "conceptor" of the wrench 1505 in question?

A. No, I did not.

Q. You did not follow up your investigators' information?

A. I was not in position to because all of those people were antagonistic to me, so far as I knew. As a matter of fact, my information was they couldn't get any information direct from the Thomasmas through the investigators.

Q. And do you want to state now, Mr. Thomasma was antagonistic to you on September 17, 1940?

A. On September 17, 1940, I considered him as an adverse party. He was a director and a stockholder of Precision and the investigators were trying to determine the facts and they had not been able to secure anything worth while through Mr. Thomasma.

Q. And, as a matter of fact, you knew in June, 1940, when Mr. Krichiver came to your office representing Mr. Thomasma, for the sale of Thomasma's stock in the Precision Instrument Company, that Mr. Thomasma was not satisfied with the general situation?

A. No, I don't - no, I didn't know that.

Q. You do recall Mr. Krichiver coming to your 1506 office in June, 1940?

A. Yes.

Q. And he came there for the purpose of selling Thomasma's stock, did he not?

A. No, no, Mr. Krichiver sent a very queer letter to Mr. Wacker, stating something to the effect he had something of interest to tell him and I arranged for an appointment and when Mr. Krichiver came into fill that appointment with Mr. Wacker and me, he referred to the sale of some stock he had and that he could get for us additional shares of stock if we wanted them, it would be much, he thought, to our advantage to have them, but no mention was made of Thomasma at that time.

Q. Well, you knew Thomasma was having his difficulties with Larson and Carlsen, or, putting it the other way,

Larson and Carlsen were having their difficulties with Thomasma?

A. In June, 1940?

Q. On September 17, 1940 then?

A. I am not certain whether I knew at that time they were having difficulties.

Q. And I now read to you the memorandum prepared in your office on September 17, 1940, Defendants' 1507 Exhibit 13, Page 6:

A. Mrs. Ryan owns thirty-five shares of stock in Precision. Until recently she owned forty shares but was induced by Thomasma to sell five shares to David M. Krichiver, 139 North Clark Street. Thomasma told Mrs. Ryan that he was being crowded by Larson and Carlsen for control of the company and by getting Krichiver into the company, he would have legal aid in the company.

Mr. and Mrs. Thomasma both told Mrs. Ryan that the Precision wrench was originated in the basement of the Thomasma home at 1101 Potter Road, Park Ridge, Illinois, and that it was invented by Thomasma.

And I now hand you the memorandum and ask whether or not you had that information on September 17, 1940?

(Handing document to witness.)

A. I did; that is my memorandum.

Q. And with that information obtained from John A. Wise and Son, you did nothing further to follow it up?

A. They were working on the case, they were following it up. They were trying to get every bit of information they could. I wasn't working personally as an investigator in the matter. I was too busy at that time to go out and do it myself when I had investigators working on it.

Q. Did you have them then follow up the information that was contained and which they gave you on September 17, 1940?

A. They were following up everything, trying to reach the ultimate end of just when this all happened and how it happened.

Q. And you knew in September of 1940 that Thomasma had that wrench—when I say "wrench," the information with respect to a wrench—from Automotive and delivered that information to Larson?

A. I did not know it. I was informed that that was the way it happened.

Q. And you were informed that was the fact sometime during the month of September, 1940, is that correct?

A. I think that the information was in my hands to that effect at that time.

Q. And, I take it, you likewise did nothing with respect to that information in connection with the Interference?

A. I was doing much. I was having the investigators pursue the matter as far as they possibly could.

Q. And when you received information from the investigators, what did you do with that information?

A. Well, they weren't giving me—weren't able to get much information for me. That is one of the things that impressed me so much about it.

Q. And I now call your attention to Defendants' Exhibit 13, Page 3, with the memorandum bearing date of September 9, 1940, and I am going to read from Page 4:

About that time Larson, who was his friend then, was having difficulties and his auto supply business was nearly on the rocks. He was looking around for something to do. He happened to go to Thomasma's house one night and he asked Thomasma what he was doing. Thomasma showed him the wrench and Larson asked him if they couldn't work it out together and they decided to do so. That was about two years ago or in the fall of 1938. Then came the problem of distribution. Larson didn't have any money. He wanted Thomasma to put up the money. Thomasma suggested a corporation. Larson was against it because he would have to keep books that people would look at."

1510 And you had that information on September 9, 1940?

(Handing exhibit to witness.)

A. That is information that the investigators had secured for me as of that time, if that is the date of the memorandum.

Do these pages run consecutively?

Q. Well, I will hand you the copy, Mr. Smith, your counsel, gave me, and you might refer to that. They are consecutive and the page I referred to is part of the memorandum dated September 9, 1940.

(Handing document to witness.)

A. That is correct.

Q. And that was the type of information that you

wanted your investigators to get for you when you put them on the job about August 7th or 8th, 1940?

A. I wanted them to get all the facts with respect to the origin and the development of the wrench and how Thomasina entered the picture and where Snap-On entered the situation, the relationship of all parties, yes.

Q. On that same page, Page 4, you notice the type-written name "Larson" had been erased or a line drawn there through and there above appears in ink, I believe, the name "Carlson." Does that happen to be your 1514 handwriting?

A. I don't know whether it is or not.

Q. And I notice along in the margin of that page the word "No." Does that happen to be in your own handwriting?

A. I don't know. It is written over some way.

Q. And I notice on that same page, still referring to Page 4 of the Defendants' Exhibit 13, that there is an encirclement or a line drawn around that portion which I read a few minutes ago and I would like to ask you whether or not you put that there?

A. I couldn't say. I presume that I did though, and I don't know the reason why.

Q. And I notice also that there are some "astericks," longhand "astericks" on the margin.

The Court: What is an "astericks"?

Mr. Freeman: Oh, one of those little figures.

The Court: "Asterisk," isn't it?

Mr. Freeman: Maybe you are right and I am wrong.

The Court: I thought that might be something new you patent lawyers had.

Mr. Freeman: Q. I now ask you whether you put that there?

1512 A. I think I did. As I recollect, I had this before me in connection with my cross examination of witnesses and that was to call my attention to something I wanted to cross examine in respect to.

Q. And you had information that Mr. Carlson was introduced to Mr. Larson by what individual?

A. I think Mr. Thomasina did that but it came about through Mrs. Thomasina.

Q. When did you get that information either from your investigators or otherwise?

A. I don't recollect that.

Q. You knew that when you cross-examined Larson's witnesses, did you not?

A. I did if it is contained in these notes you have here.

Q. Did you ever confirm that bit of information with Mrs. Thomasma, that is, as to how Larson met Carlsen?

A. I did and, as I recollect, it was either after Mr. Thomasma gave me his statement—it was after Thomasma gave me his statement on the 7th and 8th of November. I am not certain whether it was before or after he signed the affidavit.

Q. And you knew that if Larson had been introduced to Carlsen in 1938 or 1937, as a result of the information given you by Mrs. Thomasma; then, as a matter of fact, when Larson said he had used one of his wrenches on Carlsen's car earlier than that, you must have known that that was wrong?

A. Not necessarily. I have seen witnesses who were quite positive in statements that were wrong. People can be mistaken and I wouldn't rely upon that until I had more definite proof of the fact because there was a matter of a pickle patch involved out in Arlington Heights and a matter of an old Packard car, or something like that. I would want to look into all those things.

Q. Well, you had Mrs. Thomasma's information at that time?

A. That is correct.

Q. And you likewise had Thomasma's information at that time?

A. I had his statement.

Q. And you likewise had the information that your detectives gave you in September, 1940 with respect to Mrs. Brown—Mrs. Ryan?

A. That is correct. I had that information but I still had not proved the fact.

1514 Q. And you likewise had on September 3d, 1940, another memorandum, Page 2 of Defendants' Exhibit 13, that:

"Staehlmaack told Ed Schultz that Larson and Thomasma were on the outs with each other because Thomasma had invented the wrench and Larson was now trying to freeze him out. Thomasma has a key to the Precision plant and goes there occasionally in evenings but he doesn't work there any more."

You had that information on September 3, 1940?

A. That is the story they gave to me, yes.

Q. From your investigators?

A. From my investigators.

Q. And do you know whether your investigators ever talked to Mr. Staellmack?

A. I don't know; I presume that they did.

Q. Do you know whether your investigators ever talked to Mr. Ed Shultz?

A. I don't know.

Q. Did you ever talk to Mr. Gus Staellmack?

A. I never did.

Q. Now, your investigators were bringing this information into you and during September there were several memorandums prepared in your office with respect to what the investigators had then found out, is that correct?

The Witness: What is the question?

(Question read by the reporter.)

The Witness: A. You have them here such as I have in my hand now and they were making oral reports from time to time but there wasn't anything I had of any importance other than what you have here.

Mr. Freeman: Q. And these reports though were made from the information given you by John A. Wise?

A. That is right.

Mr. Smith: I suggest instead of calling these "reports," you call them "memorandums" because that is how they were introduced, as memorandums that Mr. Fidler made in accordance with information given him.

Mr. Freeman: I predicated my question on the basis they were made from the information received from John A. Wise and, whether you call them a report or a memorandum, I will not differ with you much on that. We are talking still about Exhibit 13.

The Witness: Yes.

Mr. Smith: All right.

Mr. Freeman: Q. Now, these documents, Exhibit 13, represent and disclose information which your investigators brought to you?

A. That is correct.

Q. And the dates thereon are the dates representing the time when the investigators gave you that information, is that correct?

A. Well, approximately so. I don't know whether it is

that date or the date I made the memorandum or dictated it.

Q. Well, all of these papers constituting Exhibit 13 were made and known to you prior to your meeting with Thomasma, on the evening of November 3, 1940, is that correct?

A. That is correct.

Q. And can you say whether or not all of the information contained in Exhibit 13 was known to you prior to the time Larson began taking his testimony on August 24, 1940?

A. I had before me this information prior to that time and, if I recollect correctly, I used it in connection with the cross examination of the witnesses and that is one of the reasons why I conducted, as Mr. Alberts has said, a very searching cross examination, one of the reasons I did, because I had this information but still they denied it and their story seemed quite logical in denying it.

Q. After you had received the information from your investigators that Thomasma had disclosed the wrench to Larson; and you then had the names of the individuals referred to in the several documents, Defendants' Exhibit 13, you personally never interviewed any of them; is that correct?

A. I had gathered this information through the investigators, Mr. Freeman; and, if I had gone ahead to take the testimony in the Interference on behalf of Zimmerman, I would have, of course, had to run down all of this, gather it together, talk to these people, call them in as witnesses, subpoena them, to get the story before the Patent Office.

Q. And the information brought to you by your investigators, as taken from these memorandums, supplements Thomasma's affidavit, is that correct?

A. No, the Thomasma affidavit, I would say, would supplement this because it came afterwards.

Q. Is there any information contained in the investigators' reports at variance with the information that was given you by Mr. Thomasma as contained in his affidavit?

A. I couldn't answer that question without reading the affidavit and reading these reports and then telling you.

Q. Did you ever make a comparison of the Thomasma

story with the reports that had been given you by these investigators?

A. No.

Q. And you received many reports from the investigators orally, or, at least, reports that you did not make any written recording of?

A. Yes, because they had nothing to report; that happens all the time.

Q. And when they gave you information of importance, material information, if you please, you then made a recording?

A. No, not necessarily.

Q. Well, tell us what other information of a material character was given you by the investigators over and above what is contained in these memorandums that I have been referring to?

A. I don't know. I couldn't tell you that because I saw Mr. Wise many times in connection with that 1519 investigation.

Q. You worked rather closely with Mr. Wise?

A. Well, no, I wouldn't say that. He would be into my office or into our offices several days in a week and when I would ask him—I would see him, he would stop in my room, and I would say, "Anything to advise me?" and he would say, "No," or advise me and go on his way.

Q. And did you ever check the information that was given you by Mr. Thomasma on the evening of November 7th and 8th at your home through the investigators?

A. Yes.

Q. Now, just tell us what information.

A. I can't tell you that because I told them the general story or gave them the contradictory points of that story and they went on their way to check the matter.

Now, one thing I do remember was this, as I said yesterday, was this man Dawson. I thought that he, if it were a fact, I didn't know, there had been said something about him being put out of the way or "Got taken care of," and if that was a fact, maybe there was a good reason for that, and I would certainly like to hear his story, and I know there was a great amount of time put in trying to locate him, and, as I remember, even tracing him as far as California.

Q. Did Mr. Wise tell you that his investigator Bau-

mann had become rather friendly with Mr. Thomasma prior to September 30, 1940?

A. I did not know anything about that.

Q. Did Mr. Wise tell you that his investigator had talked to Mr. Thomasma as early as September 30, 1940?

A. I think probably so but the information that I was getting was to the effect that Mr. Thomasma was very close mouthed and they couldn't get any information directly from him and it was making it quite difficult to proceed in the investigation.

Q. And after September 30, 1940, you made no memorandums whatsoever of any of the reports orally given you by Mr. Wise?

A. Well, I don't know exactly when the last four pages of Defendants' Exhibit 13 were made but I believe that that was made up shortly before the taking of testimony on behalf of Larson.

Q. That is the last four pages?

A. That is right. I am not certain as to that but I think they were made up at that later date and if 1521 that contains information there over and above the other, then it would be additional information.

Q. Incidentally, the first eight pages, when taken from your files, were original or ribbon copies and the last four pages were carbon copies. Now, as a matter of fact, when you look at the last four pages, isn't it true that that contains the information you gave to the investigators at the outset?

A. No, I don't think so.

1522 Q. Isn't it true that the information of the last four pages is of a general nature, whereas the particular memorandums dated September 3, September 9, September 17, and September 30th, 1940 are all in detail?

A. Well, I think they speak for themselves. They may appear that way. In any case like that I make notes, sort of an outline of my case as I go along, so that anybody else could pick up the case and have some information as to what I had.

I don't know when this was dictated; I have no idea. I tried to refresh my recollection in every way, and I have been unable to determine, prior to the time of giving my testimony here.

Q. And you had information on September 30th, 1940

from Mr. Larson's ex-partner that Larson did not start any work on a wrench until 1938, did you not?

A. There is a notation to that effect in the memorandum dated September 30, 1940. That is information that had come to me through the investigators.

Q. And your investigators received that information from Jack P. Kamppenin; is that correct?

A. I don't know; I assume so.

Q. Well, I am referring to the memorandum.

1523 A. Yes, they informed me that it came from Kamppenin.

Q. And you had information from your investigators on September 30th that he, Kamppenin, knew nothing of the Precision wrench until late in 1938, when Larson and Thomasma started working on the wrench during the evenings, in Larson's or Thomasma's basement; isn't that correct?

A. That is what this report, memorandum says; and that is information that had come to me through the investigators.

Q. And you also had information that Larson and Kamppenin were very close friends; you had that information, — page 8 of your memorandum, Defendants' Exhibit 13?

A. That information came from the investigators, yes; and I don't see anything here to indicate that it was the result of an interview with Mr. Kamppenin. So I cannot say as to whether it came directly from Mr. Kamppenin or from someone else.

Q. Well, at least, we have the report of the investigators that gave the sum and substance of the information thus far obtained?

A. That is correct.

Q. And the reporting of that information on September 30, 1940 was accepted by you as information given to you by your investigators; is that correct?

1524 A. That is right.

Q. And you had every confidence in your investigators?

A. Yes. That is, now, are you inferring that I had every confidence in all the information they brought to me, and I accepted it as absolutely a proven fact, anything that they told me?

Q. I am not trying to infer anything; I am just asking

you a question, whether you had confidence in your investigators...

A. I had confidence; and I think I testified in my pre-trial deposition as to their conduct, and so forth. But as to the information that they would bring to me, I certainly would have to prove that information; I would have to prove it through investigation; further investigation.

Q. By whom?

A. By the parties that were involved. For example, I would have to interview Mr. Kamppinen and put him on as a witness, if I wanted to go into that.

Q. You never interviewed any of these people after you began receiving reports from your investigators?

A. No; it had not reached the point where we were going to take testimony. And I might add there that I had that information, and it might be, it might well be that I would bring it out through the cross-examination of these witnesses. I didn't know that they were going, at the time I was getting this and when I went to cross-examine them,—that they were going to conceal from me the fact, if it were the fact.

Q. I am going to read page 8 of the memorandum, Defendants' Exhibit 13, dated September 30, 1940: "Although Larson and Kamppinen were very close friends while working for Auto Parts Company in Des Plaines, and even though they pooled their resources and ability and brains in an attempt to make outside money, Larson never once mentioned a wrench to Kamppinen prior to 1938. Larson and Kamppinen needed something very badly to manufacture, to help them get back in condition to make some money; but notwithstanding all this, Larson never mentioned anything about a wrench. Naturally, if he had known about the wrench at that time he would have brought it forward as the answer to their problem."

Now, that was the memorandum prepared by you, or dictated by the investigators to your stenographer.

A. It was prepared by me from information that came from the investigators.

Q. Might I ask now whether all of the first nine pages of these reports of September 3, 9, 17, and 30 were prepared by you?

A. You mean all of the pages in Exhibit 13?

Q. Those that are dated reports.

A. Yes; they were all prepared by me.

Q. When you testified on pretrial, had you at that time had your interview with Mr. Salmon? You recall Mr. Salmon testifying that prior to May 3, when Mr. Olson and myself went up to his office, you and Mr. Hibben talked to him?

A. I do not recollect for certain, but I think I talked to him after that.

Q. And you recall now that you did write to Mr. Wacker after you interviewed Mr. Salmon for the first time that he, Salmon, indicated that there were many similarities in the drawings?

A. Well, I recall, not just now, but shortly after I gave my deposition, and as I recall it, during the giving of my deposition the letter that I had written to Mr. Wacker respecting Mrs. Keeler was brought forward; and I saw that letter later, read it later and refreshed my recollection in that respect. As a matter of fact, if you will get my pretrial deposition, a little further on, on 1527 page 61, I believe you will find that I mentioned something that I did not recollect for certain about that.

Q. And when you retained a handwriting expert, you were out to get an opinion from the handwriting expert so that you could use it in your conference of November 28, 1940, when you were going to confer with Messrs. Johnson and Alberts?

A. I was going to give them all the information that I had at that time; yes; that is correct.

Q. I am just asking whether or not you tried to get the opinion so that you would have it at that time.

A. That is correct.

Q. And you went to Mr. Salmon's office on the 22nd?

A. That is correct.

Q. And this is a correct report of that meeting, —and I am reading from your letter of November 23, 1940, to Automotive Maintenance Machinery Company: "While I was in conference with Mr. Salmon he made a cursory examination of the drawing in question, in comparison with another drawing made by Thomasma; and he said that there were many items of similarity which indicated that both drawings were made by the same man. He 1528 of course would not express himself finally in the matter until he has made an examination of the kind usually made by handwriting experts."

That is a correct statement, is it not?

A. That is correct.

Q. And Mr. Salmon asked you for some additional information at that time, did he not?

A. Yes; he wanted—I had at that time, I think, the copy or photostat of the Larson drawing which Mr. Alberts had given me, which was of reduced size; and he wanted something that was enlarged, more nearly the size of the drawing Exhibit 22; and I secured that for him and handed it to him.

Q. And you had a promise of Mr. Salmon that he would have a report for you prior to your meeting on Thursday?

A. Well, I don't know whether I had a promise or not; but as I recall it, I did get in touch with him on the 27th; and he did not have a report for me, but he wanted to see some other work of Thomasma's.

Q. Now, so that we get this straight, you first met Salmon on the 22nd?

A. That is correct.

Q. And that would be Friday?

A. I don't know what day it was.

1529 Q. And you were to get Mr. Salmon some additional papers by the following Monday, so that he could get you a report and have it to you by Thursday, so that you could have that information when you had your meeting on November 28, 1940?

A. I was to get the additional information—and the idea was, yes, to have something for me by the time of that meeting.

Q. And the additional information was to be gotten to Mr. Salmon on the Monday prior to the meeting that you had with Messrs. Johnson and Alberts?

A. I do not recollect that.

Q. I now read from your letter of November 23, 1940, addressed to Automotive Maintenance Machinery Co.: "I am getting the necessary materials to him this coming Monday, and he has promised a report before Thursday."

Does the letter of November 23, 1940, Defendants' Exhibit 92, refresh your memory with respect to the handwriting episode?

A. That is correct.

Q. And do you now recall whether or not you got the

information that Mr. Salmon requested on the 22nd to him on the following Monday?

1530 A. Yes, I got the enlarged drawing, as I recollect it, to him at that time.

Q. And Mr. Salmon worked on the documents that you delivered to him on the following Monday, which was the 25th, on the 26th and 27th; is that correct?

A. I don't know when he worked on them.

Q. Do you recall his testimony to the effect that his work sheet, that envelope he had, indicated that he did some work on the 25th and then again on the 26th; and he met you in the late afternoon and evening of the 27th of November?

A. Something to that effect; I do not recollect exactly.

Q. And I would like to have you refresh your recollection now, whether Mr. Salmon, after you delivered to him the information on November 25, asked you either on the 25th or 26th for any additional information?

A. Not that I recollect.

Q. And you do not recollect in the testimony of Mr. Salmon that he asked for any information over and above what you delivered to him on the 25th?

A. On those two days?

Q. On those two days, the 25th or 26th of November.

A. No, I do not recollect; on the 27th, though, he 1531 did request some additional information, as I recollect.

Q. Then, on the 27th Mr. Salmon delivered to you his tabulation of similarities, in the form of his work sheet, which is now Defendants' Exhibit 12; is that not correct?

A. That is correct.

Q. And, Mr. Fidler, do you recall your pretrial examination with respect to that document, Defendants' Exhibit 12?

A. No, I don't know exactly what I said about it. Whatever I said is what I said here, I would say.

Q. Do you recall my asking you,—and I am now reading from your pretrial deposition, page 58: "What did Mr. Salmon tell you with respect to the work that he had done when he delivered to you Snap-On Exhibit 12? Answer: He explained that this was his work sheet, and that what was indicated on there was similarities between the two drawings. But he was not satisfied with that; he wanted something else in the nature of a drawing." I be-

lieve he explained that he was up against a different kind of a situation in treating drawings than in treating handwriting; and that a man might be a poor draftsman at one time, and a month later might be much improved and show differences in work; and that that was the reason why I showed him this other drawing. And if I recall correct, in looking at that other drawing he found some discrepancies, and told me that he could not give me an opinion in the matter without further investigation.

Now, as a matter of fact, Exhibit 12 was delivered to you to show the many similarities.

A. He brought it with him because he had not yet completed his work; and he was going to give me the benefit of whatever he had done, for my conference the next day. But when he saw this other drawing and found some additional dissimilarity, or something, he was further away from advising me, as I interpreted his statements, than he had been at any time before.

Q. But up until the time you gave him the additional or third drawing, the missing drawing, he had not asked for any other drawing, had he—over and above what you had already furnished him on the 25th?

A. I think that he asked me—as I recollect it, he asked me that on the 27th.

Q. So that his work sheet, Defendants' Exhibit 12, he gave to you to show the similarities between the Larson drawing, Exhibit 27, and the Thomasina drawing, which you gave him for purposes of comparison; which is 1533 now Defendants' Exhibit 22; is that not correct?

A. No, he did not do that at all, because I did not understand, and I do not understand at this moment, what that means, that sheet.

Q. Your board Mr. Salmon testify that that sheet was merely a location sheet, so that he would have something to look at, and that he would not need to check over the drawings in great detail to find certain figures and words, and so forth; do you recall such testimony?

A. He testified something to that effect.

Q. And do you also recall now your testimony with respect to Defendants' Exhibit 12? He explained that this was his work sheet, and that what was indicated on there was that there were similarities between the two drawings?

A: Yes.

Q: And I have not read your full answer; I did that a minute ago, so I am not going to repeat.

A: That was correct; I am just stating what my understanding, what Mr. Salmon had told me; I don't know what he intended to explain to me.

Q: And your explanation as to what he told you, at least, is different from what Mr. Salmon told us the other day, when he was on the stand?

1534 A: I don't think so; I don't think there was anything different from the fact that there was many similarities indicated.

Q: Now, did Mr. Wacker call you on the morning of November 4, after Mr. Travis called him, between the hours of 1:00 a. m. and 2:00 a. m., that Mr. Thomas would go through with the matter?

A: Not that I recall; my recollection is that I did not get a call to that effect—or not to that effect, a call to the effect that Mr. Thomas wanted to talk to me, until the 7th of November.

Q: When did you arrange for Mr. Wacker to prepare a memorandum of his conference of November 3, 1940?

A: I believe that I told Mr. Wacker on the day of that conference.

1535 Q: And have you had occasion within the last week or two to re-read Mr. Wacker's memorandum of November 3, 1940?

A: I have glanced through it; yes.

Q: And does it accurately, to the best of your recollection, state what transpired on the evening of November 3, 1940?

Mr. Smith: May I suggest that the witness be given a copy of the letter, so that he may answer definitely?

1536 The Court: I think that is only fair.

Mr. Smith: (Handing document to the witness.)

The Witness: A: You are asking about what transpired there?

The Court: Whether that is an accurate description of what transpired.

Mr. Freeman: Correct.

The Witness: A: I think that is a correct, as I recollect it, statement of what transpired.

Mr. Freeman: Q: Is there anything, Mr. Fidler, that you would like to add to that, in order that we have a com-

plete picture of the meeting of November 3, or anything that you want to modify?

A. Well, none other than I have given in my testimony already here, as to what transpired, when I testified on my direct examination.

Q. Now tell us exactly what you told Mr. Thomasma, Mr. Krichiver, and Mr. Travis, as to what the facts were? —And so that it is definite, I refer you to page 3 of the memorandum, and I read: "You and I both stated definitely that we knew the facts in the case, and stated them as we knew them to be."

1536 Now I would like to have you tell us just what you stated to be the facts as you knew the facts to be.

A. Well, I do not recollect everything that I said. I think, as I stated yesterday, I can give you the gist of this thing. They were acting very mysteriously, and sort of indicating that they knew that there was something wrong; it would be to our benefit to buy that stock, or that we should buy the stock because Mr. Thomasma might destroy the value of the stock.

And then in trying to draw out from them what they meant, I recited things that I knew about the story; for example, Mr. Thomasma's connection with Snap-On—or with Automotive; his connection with Precision and the fact that Precision was making a wrench that had been taken by Snap-On, that Automotive had lost the business of Snap-On, and that general story; that is, information that had been told to me in connection with investigation matters.

Q. And didn't you tell them then that the Snap-On Precision wrench came from Automotive by way of Thomasma to Precision, and then to Snap-On?

A. I told them that—I do not recollect whether I put it that way, or I said that; but I think that I would 1537 have told them that I had been told that that was the fact.

Q. And that fact you had made known to you prior to November 3, 1940?

A. I had been given information or told about that prior to that time; and I knew, of course, that Thomasma had been connected with Automotive and was associated with Zimmerman in the development of the wrench; I knew that fact.

Q. Well, according to the information you had received from your investigators, in accordance with the

memorandums that we have here, Defendants' Exhibit 13, you stated, did you not, to them that the wrench had been brought from Automotive to Precision and handed back to Snap-On; did you not?

A. I think I probably did. I did everything to try to bring out from them, to get a hint from them as to what they meant by the fact that we were being double-crossed, or that there was something wrong in this picture, what this mysterious thing was that they wanted to tell us about.

Q. Well, isn't it a fact that you knew, as a fact that 1538 the wrench sold by Snap-On was brought to Precision from Automotive by Thomasma?

A. That was the information that had been given to me; I didn't know what the real fact was back of that. And that is the reason why I was investigating, the reason why that I continued investigation after the Thomasma statement.

Q. And instead of my using the word fact, if I had used the word information, then you would agree with me; is that correct?

A. As to matters that had been told to me by investigators.

Q. By people whom you were paying to find out the facts?

A. To find out the information.

Q. And if I said information, then, instead of facts, you would agree with me?

A. In respect to what?

Q. With respect to the information that you were getting from your detectives or investigators, for which Automotive was paying its good money.

A. Those were matters that they told to me; and I could not accept those as facts. It was information coming to me through the investigators, and I could not 1539 accept it as fact, and I would not accept it as fact until the matter had been gone into and those people that would support that had testified.

Q. Now, in Mr. Wacker's report of November 5, Defendants' Exhibit 11, you stated—or, rather, Mr. Wacker stated that, "Both you and I,"—meaning yourself, Mr. Fidler and Mr. Wacker?

A. That is right.

Q. "Stated definitely that we knew the facts in the case."

and stated them as we knew them to be." And you are now telling us that what you gave them was information as distinguished from the facts; is that correct?

The Court: Oh, he gave them the information he got from these detectives. Let us get along to something else.—That is what you said, isn't it, Mr. Witness?

The Witness: A. That is correct.

The Court: All right; let us get on to something else.

Mr. Freeman: Q. Mr. Fidler, I would like to have you look at record page 1039, your answer to the direct question—strike that, please.—

Now, you then, after the meeting of November 3, 1940, had a meeting with Mr. Alberts on November 20th; is that correct?

1540 A. That is correct.

Q. And you gave Mr. Alberts some general information at that time with respect to what information you had; is that correct?

A. I had the Thomasma affidavit at that time, and I gave him the opportunity to read it. He didn't want to, but I told him what the contradictory matters were, as set forth in the affidavit.

Q. And a meeting was arranged for on November 28th?

A. That is correct.

Q. 1940, at your office?

A. That is correct.

Q. And at that time you told Mr. Johnson and Mr. Alberts, "According to the information that I had of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On, when I say we I mean Automotive; is that correct?"

A. That is correct.

Q. And that was the information that you gave to Mr. Alberts and Mr. Johnson on November 28, 1940?

A. I stated something to that effect; in response to Mr. Johnson's declaration that he was there with Jean 1541 hands, and in view of all that had gone before, as you will see from the correspondence. You would not expect me to stand silent when he made that statement.

Q. And you made that statement to Mr. Johnson and to Mr. Alberts on November 28, 1940, the statement that I just read?

A. Something to that effect. I think that I said I could not remember exact words, or anything like that. But that was the thing that I was trying to convey to them.

Q. You wanted to get across to Mr. Johnson and to Mr. Alberts that you had information that the wrench which Snap-On was then selling came to Snap-On from Automotive by way of Thomasina and Precision; is that correct?

A. I don't know whether I wanted the information; but I think that any reasonable person knowing that general fact respecting Thomasina, and seeing the two wrenches, could not deduct anything else. I said from the beginning I could not believe that Snap-On would be in an interference with Automotive. You read my letters; and it was just an honest belief on my part.

Q. I am reading your testimony; and you made 1542 that statement according to the information that you have?

A. That is correct.

Q. Now, as a matter of fact, if that information were correct you would have to know that Larson's dates, going back to 1934 and 1935, were incorrect?

A. No.

Q. In other words, you are telling us that you had information that Larson's or that Snap-On's wrench came from Automotive by way of Thomasina and Precision; you stated that from the information you had, correct?

A. Yes; but let me tell you one of my theories of that case was that possibly if Larson had that wrench at an early date, what he had done amounted to nothing but an abandoned experiment. And in cases of abandoned experiments the man that had it and dropped it is stirred into activity later on when he sees somebody else doing something. And I have always had in mind that if that story were true, that maybe if Larson did have something that time, maybe Thomasina connecting himself with Precision and showing him what had gone forward there at Automotive, might have stirred him into activity and indicated to him that he had a pretty lucrative spot to 1543 land with Snap-On.

Q. And you are now telling us that both statements could be correct; that is, the information that you gave to Mr. Alberts and Mr. Johnson November 28th, 1940, and also that Larson had invented the wrench, as he testified, in 1934.

A. It is a question of what you mean, invented; I think if a man has abandoned something he did not invent anything. He might well have done something back in 1934.

Q. Could the Larson story, as you heard it delivered to you when you took the testimony of Larson, be true; and at the same time, the statement that you made to Messrs. Johnson and Alberts be true?

Mr. Lindsey: What statement is that?

Mr. Freeman: That which I have read, and I will read it again: "According to the information that I had of a wrench that had been brought from Automotive to Precision and handed back that way to Snap-On, a wrench very similar to the one that we had made for Snap-On."

Mr. Smith: Will you read the first part of the question?

(Question read by the reporter.)

1544 The Witness: A. I don't know what you are driving at. That is the way that I see it, and the way that I considered the matter.

Mr. Freeman: Q. Do you recall testifying that when the meeting opened there was some question about clean hands on the part of Snap-On?

A. Yes.

Q. And did you recall that you testified,—and I will read, for the sake of quickness: "I know that shortly following that statement I challenged it by reviewing the facts that I knew respecting my relationship of Snap-On and Automotive, and Snap-On and Precision and Thomasma in the picture; and I stated that in view of those circumstances I did not feel that Snap-On was very well circumstanced in the picture, or in the situation?"

A. That is correct.

1545 Q. Mr. Fidler, the first time that you learned of Thomasma's authorship of the drawing was when he stated to you, at the bottom of page 19 of the affidavit: "Yes, I know all about those developments—that drawing made by the high school boy—I made that drawing. John Thomasma, my brother, watched me make that drawing."

Is that correct?

A. My recollection is that is correct, either on the 7th or 8th of November, 1940. I believe it was the 8th.

Q. And the first time that you heard it was when he answered in accordance with the answer that I read just

a moment ago and as contained on the bottom of page 19 of his affidavit, which is now in evidence as Defendants' Exhibit No. 21, is that correct?

A. That is my recollection. I now think that I did have some preliminary discussions with him on the first evening, but I am not certain whether he told me on that first evening about the making of that drawing. I don't believe that he did.

Q. Mr. Fidler, what took place between that answer on the bottom of page 19 of the Thomasma affidavit that I just read that necessitated your stating to him, and I now read from the top of page 20 of the affidavit:

"Mr. Fidler: You are here to tell the truth, and if it hurts you can't help it. You want to clear yourself in this picture. You don't think you have done any wrong, but you want to show you haven't because somebody would like to make you the goat in this thing?"

A. I have no recollection, but I was getting this statement from this witness whom I expected to use as a witness in the Interference, and I wanted his statement to come forward as freely and in a way that I might rely on it to the greatest extent.

Q. Well, he had already made the statement with respect to the drawing, hadn't he?

A. I don't know what you are—

Q. He had already made the statement. You have the affidavit there.

The Court: What page?

Mr. Freeman: Page 19. For the sake of clarity I will restate the question:

Q. You had already received information from Mr. Thomasma in answer to your questions in accordance with his answer contained at the bottom of page 19, and what I would like to know now is what brought about your statement contained on the top of page 20 of the affidavit?

A. I don't have any idea.

Q. Were there any conversations or anything between the answer on page 19 and your statement contained on the top of page 20?

A. There may have been. I couldn't say.

Q. Your stenographer who took down the statements made by Mr. Thomasma in response to your questions still has her notes, has she not?

A. That is right.

Q. Have they been checked recently?

A. No; not that I know of.

Q. Do you know whether or not those notes run consecutively as the affidavit runs or is there information or notes that were not transcribed for any reason?

A. As I recall, they run somewhat in the order that is in the affidavit. Now, I know that there were discussions, matters that would not be material in the statement which I would say from time to time, "You don't need to take that," and I think, though, that the notes that were taken run pretty near as it is in this statement.

Q. But there was conversation between questions and answers so that if you didn't want that to be recorded you so advised your secretary?

A. That is right, if I thought it wasn't something material or to the general story that was being told. He would get off onto various subjects during the talk that I had with him.

Q. And throughout the Thomasma affidavit, Thomasma showed a startling familiarity with all the details of the development of the Larson wrench; did he not?

A. Well, I don't know what you mean by "startling". But he indicated to me, from what he was telling me, that he did. For example, the drawing, the code marking on the wrenches and things like that.

Q. And Mr. Thomasma was the first individual to give you the code marking, that word which corresponded to the numerals "1" up to "9" and "0", is that correct?

A. That is correct. I think that is about the only thing of Mr. Larson's testimony that he did not have a clear and immediate and logical explanation of.

Q. And Mr. Thomasma never saw the exhibits in the Interference except in the form of the small photographs that you had, is that correct?

A. That is all, as I recollect it.

Q. You showed him a small photograph?

A. I did, during our discussions.

Q. And he was able to tell you all about the details of Larson's exhibits; is that correct?

A. He told me considerable in detail.

Q. Do you recall on page 13 of the affidavit that Thomasma told you that several of the first spring bars were heat-treated at Lindberg's?

A. I asked him that question. He must have told me, because I wouldn't have—

Q. Well, you find it in the affidavit, do you not?

A. Yes.

Q. And Lindberg's is a regular heat-treating plant, that is, a plant for heat-treating metals here in Chicago?

A. That is my understanding.

Q. Now, did you check with Lindberg's to see when that work was done?

1550 A. I did not.

Q. Did you have your investigators check with Lindberg to see when that work was done?

A. I gave them the story and I don't know whether they checked it or not. Please understand me, that I turned the information that I had gained over to the investigators and kept them going on this thing, trying to get together facts, and one of the things that we were mainly interested in at the time in getting was trying to contact Dawson because I thought that he might well be a key in the picture somewhere; if he had been taken care of or gotten away so we couldn't call him as a witness.

Q. And all of the attention was drawn to this man Dawson, is that right?

A. Not all of it, no. In part, that was one of the main things. That to me was a very outstanding circumstance.

Q. And did you check with the bank at which Larson and Thomasma borrowed \$100 to see when they bought the South Bend lathe mentioned on page 50 of the Thomasma affidavit?

A. I don't know whether they did or not. I didn't 1551 myself personally, but I know that the investigators knew of that, and I don't know whether they checked that at the bank or not.

Q. You have no information with respect to what the investigators did with the information that you gave them, that is, the leads that you gave them that you received from Thomasma?

A. No, only except they were trying to check the various matters. Another thing I know they were trying to check was in respect to some of the people who were supposed to have been contacted for the purpose of trying to distribute the wrench for Mr. Larson. I believe Mr. Thomasma or somebody, in this affidavit referred to

a man by the name of Clark. I know that they were trying to locate those people.

Q. And do you recall that Mr. Thomasma said, on page 53 of the affidavit, that Stone, a manufacturer's representative, could verify anything that he, Thomasma, said? You find that on page 53, do you not?

A. That is what Mr. Thomasma said to me.

Q. Did you or your investigators check with Stone to verify that which Mr. Thomasma said could be verified?

A. I don't know whether the investigator did or 1552 not, but I know that Stone's name was given to the investigator.

Q. Did you or the investigators check with Mrs. Thomasma as to the dates and information given you by Mr. Thomasma?

A. I talked to Mrs. Thomasma.

Q. When?

A. After Mr. Thomasma had given his statement to me.

Q. And prior to the time that you had a meeting with Mr. Alberts on November 20th, is that correct?

A. No, I don't think so.

Q. Was it prior to the time that you had your meeting with Mr. Alberts and Mr. Wacker in your office on November 28th?

A. I am not certain whether it was or not.

Q. Mrs. Thomasma was employed, that is, she was working, was she not, in November of 1940?

A. She, as I was informed, did do some work around helping people in their home, and particularly some attorney in Park Ridge, whose name I don't now recall.

Q. And Mrs. Thomasma was brought to your office when Mr. Thomasma went there on November 28th when had your meeting with Messrs. Johnson and Alberts, is that correct?

A. She wanted to come in, and I told her it was O. K.

Q. And did you have any purpose in having her come in?

A. No.

Q. Did you check with her then as to the information that Mr. Thomasma had given you?

A. I may have done so at that time. The only information that she could give to me was that she had

been instrumental in bringing Carlson and Larson together in the first instance, because she had gone to Carlson's Beauty Shop and she knew Carlsons.

Q. And on page 56 of the Thomasma affidavit he says that Larson made an effort to sell the wrench to a Mr. Clark, with a place of business on Indiana Avenue, south of 22nd Street in Chicago here. Did you or your investigators check at the Clark place of business?

A. I know that they were told to make that check.

Q. And you do not know whether any check up was made?

A. I have no information as to any results that they obtained.

Q. And on page 61 of the affidavit you find that Thomasma said that the dial for the second wrench was made by the Chicago Thrift Company, and I now ask you 1554 whether or not you or your investigators checked with the Chicago Thrift Company about Larson's or Precision's purchase of dials from them?

A. I have no recollection of that.

Q. On page 67 of the affidavit you reminded Thomasma that he had not—that you, Mr. Fidler, had not, told him anything about Larson's testimony. That is true, isn't it?

A. I wouldn't have stated it, I don't think, unless it were true.

Q. And you didn't tell Thomasma anything about the coding of the wrenches that had been introduced in evidence in the Interference, is that correct?

A. I did not. That came to me from Thomasma.

Q. And Thomasma gave you all of the information in detail with respect to the exhibits in the Interference, as to where parts were bought, where parts were heat-treated, without any information having been given to him by yourself, is that correct?

A. That is correct.

Q. Thomasma's statement with respect to the coding was correct was it not?

A. I don't know. I don't know to this day.

1555 Q. You found the code marking on the Interference exhibits, did you not?

A. Yes, the word worked out that way, but I don't know whether the background and the origin of the word came about that way or not; for all I know, Mr. Larson and Mr. Thomasma worked out that code marking.

Q. But Thomasma knew the details of the code marking?

A. He knew what that code marking meant with respect to those wrenches and the specified numbers of wrenches in view of the code marking.

Q. So that you could check the Interference exhibits and determine which wrench was first and which wrench was second, and so forth?

A. Yes, according to that code, as given to me by him.

Q. Did you ever check the company that used that code marking?

A. No, I don't think I did.

Q. Do you recall that he worked in a place where they had secondhand machinery and they used that code?

A. He did give me the names of some of the men that he remembered, that he thought lived here and there, whose names I gave to the investigators. That is as far as the checking would go. I don't recollect that we found the company by the name as such, but he remembered the names of some of the men, and I knew that they were turned over to the investigator.

Q. And you have no recollection now whatsoever as to what information the investigators gave you when you gave the investigators the name of Lindberg, which is a company here in Chicago, and the Clark Company, here in Chicago, and the Chicago Thrift Company, in Chicago? That is, you have no recollection whatsoever?

A. I don't know whether they had gotten around to that point in the investigation, because I do know that they were making every effort to try to locate Dawson, and I think that Mr. Wise did make a very strenuous effort to find Dawson.

Q. After Thomasma left your home on the night of November 8th, what further communication did you have with him before he executed the affidavit?

A. I think that about the 12th of November, or the 13th, somewhere there, he communicated to me by telephone the information contained in the last two pages of the affidavit, Plaintiff's Exhibit No. 21.

Q. Was that information, that is, that which is contained in the last two pages of the affidavit, given 1557 you directly by Mr. Thomasma or did it come through your investigator, Mr. Baumann?

A. It is my recollection that Mr. Thomasma gave it

to me over the telephone. As I said before, in either my pre-trial deposition, or in testifying here, I don't think—I am quite sure I would not have included that in the affidavit unless I had talked to or checked it with Mr. Thomasma.

Q. Do you recall that Mr. Thomasma testified that Baumann got that information and gave it to you?

A. I don't recollect. I believe he so testified, but my recollection is that Mr. Thomasma gave me that over the telephone.

Q. And who made the arrangements for Thomasma to come to your home on the evening of November 7th?

A. I received a telephone call. As I said, I don't know whether it was from Mr. Thomasma or from Mr. Travis—I think it was one of them—that they would like to see me at my home, or that Mr. Thomasma would like to see me at my home that evening.

Q. Did you know what he was going to see you about?

A. No, I thought maybe he was going to give me some of the information about which they had been so 1558 mysterious the preceding Sunday.

Q. When did you make the arrangements for your secretary, Miss Mildred Johnson, to come out to your home?

A. I made that before I left the office. I asked her to be there just in case he was going to give me information.

Q. And when you asked Miss Johnson to come out to your home you had no idea of what Mr. Thomasma was going to convey to you by way of information?

A. I did not.

Q. Mr. Fidler, you have a copy of Mr. Lindsey's letter to Mr. Alberts of December 19, 1940, Defendants' Exhibit No. 68, before you. That letter had your full approval?

A. That is right. As I said, I think I was there when Mr. Lindsey—I am quite sure I was there when Mr. Lindsey dictated it, and I didn't offer any objection to it.

Q. And you gave Mr. Lindsey the information which he relied upon to write the letter of December 19, 1940, is that not correct?

A. I had told Mr. Lindsey the whole situation that confronted me, and from that he had made his own deductions, I suppose. I heard him testify here about it.

1559 Q. And those deductions that Mr. Lindsey made, as contained in the letter, Defendants' Exhibit No. 68, met with your approval on December 19, 1940?

A. That is correct.

Q. And the letter of December 19, 1940 by Mr. Lindsey stated the facts or the information that you wanted to convey to Mr. Alberts, and in turn to Mr. Johnson of Snap-On, and likewise to Mr. Hobbs, is that correct?

A. I don't know all that was in Mr. Lindsey's mind.

Q. Well, I am just asking as to whether the letter states the facts.

A. I think so.

Q. Will you tell us what you mean by Mr. Johnson, Joe Johnson and Harry Alberts holding up the issuance of the Zimmerman patent without the slightest justification?

A. Where do you find that?

Q. I find that on page 2 of the letter, Defendants' Exhibit No. 68.

Mr. Smith: I understand you are asking Mr. Fidler for his personal interpretation of those words. He did not write the letter.

Mr. Freeman: He said he ok'd it, as though it were his letter.

1560 The Witness: I say I do not know what was in Mr. Lindsey's mind, but the letter was dictated, I believe, in my presence and I offered no objection to the letter.

Mr. Freeman: Q. And it also had your approval?

A. That is right.

Q. In your pretrial deposition, when you were asked with respect to the holding up of the issue of the Zimmerman patent without the slightest justification, and I now read from page 9 of your pre-trial deposition:

"Question: You felt on December 19, 1940 that Mr. Johnson and Mr. Alberts were holding up the issue of the Zimmerman patent without any justification, did you not?"—

and you answered:

"Answer: Well, these people had already come to me and wanted to settle the Interference on the basis proposed by Mr. Hobbs, and when negotiations after all that time had gone forward and then broken off we felt that it was a scheme for delay because at that time wrenches of the type involved in the Interference were being manufactured by the Precision crowd," and I then asked you the following question:

1561 "Question: Merely the falling off or breaking of negotiations for settlement would not justify you in saying to Mr. Alberts and Mr. Johnson that they were holding up the issue of the Zimmerman patent without any justification, would it?"—
and you answered!

"Answer: Well, after they had told us Zimmerman was the prior inventor and we hadn't yet received a concession of priority, it certainly would."

You so testified, did you not, in your pretrial deposition?

That is correct.

Mr. Freeman: That is all.

The Court: Any redirect?

Mr. Smith: One question.

Redirect Examination by Mr. Smith.

Q. How long did you talk to Mr. Dunbar over the telephone on this occasion when you talked to him on December 9th, 1940?

A. I couldn't say.

1562 Q. Your best estimate?

A. I know that my personal diary shows for that date a telephone conference charge with telephone conversation with Mr. Wacker and Mr. Dunbar of, I think, four or four and a half hours, and I remember very well that I was on the flat of my back and I even had to rig myself up some way to put the telephone to my ear because I got so tired.

Q. Could you give us an estimate of how long you talked with Mr. Dunbar, as distinguished from Mr. Wacker?

A. Well, I would say it was probably an hour's time with Mr. Dunbar. I can't recollect exactly.

Mr. Smith: That is all.

(Witness excused.)

Mr. Smith: Mr. Dunbar.

DAVID O. DUNBAR, called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Smith.

Q. What is your name and address, Mr. Dunbar?

A. David O. Dunbar, 715 Carlton Avenue, Wheaton, Illinois.

Q. What is your profession?

1563 A. Attorney-at law.

Q. What is the name of your firm?

A. Dunbar and Rich.

Q. And how long have you been practicing law altogether?

A. Since 1903.

Q. All in Chicago?

A. All in Chicago.

Q. And how long with the firm whose name you have just given us?

A. Since 1929.

Q. Do you recall a telephone conversation with Mr. Raymond E. Fidler of the firm of Davis, Lindsey, Smith and Shonts sometime in December of 1940?

A. I do, sir.

Q. Will you tell us how that conversation came about between you and Mr. Fidler?

A. Mr. Fred G. Wacker, president of Automotive Maintenance Machinery Co., called me on the telephone and asked me to call Mr. Fidler.

Q. Are you general counsel for Mr. Wacker's firm, Automotive Maintenance Machinery?

A. Well, I do a great deal of work for them. I don't know whether I am general counsel or not.

1564 Q. For how long a time have you done a lot of work for Mr. Wacker?

A. Oh, a number of years, ten or twelve years.

Q. In accordance with Mr. Wacker's conversation with you, did you call Mr. Fidler?

A. Yes, sir.

Q. And you can fix the date of that conversation?

A. Well, I assume that Mr. Fidler's statement as to December 7th, 1940 is correct. I know it was on a Satur-

day afternoon. I know it was sometime in December, but I don't know just what the date was.

Q. What was your conversation with Mr. Fidler at that time?

A. Mr. Wacker told me about this patent litigation he was having, and said in a general way that he had developed a tool in his plant. A man named Zimmermann had developed it, and they had a man named Tosema, something like that, assisting, and Tosema had taken advantage—

Q. His name is Thomasma.

A. Thomasma?

Q. Yes.

A. He had taken advantage of confidential information which he had acquired, and he and another friend of his had started another company, and that they had been selling the tool to a firm in Wisconsin and were now, and they made a tool, a similar tool and sold it to the same firm at a lesser price, and that he had reason—that he would like to know—that Tosema or Thomasma, whatever his name is, had recently admitted it, and he had wanted to know whether he couldn't file a suit for conspiracy against all of them for damages because they were trying to defraud him out of his patent and out of his profits, and he also wanted to know if he had sufficient evidence to prosecute them. He said he would like to put them all in jail if he could.

Q. Who made that statement to you?

A. Mr. Wacker.

Q. What was your telephone conversation with him?

A. He told me to call Mr. Fidler at his home and get the information and advise Mr. Fidler and let him know Monday morning what our conclusion was, and on that basis I called Mr. Fidler.

Q. What was your conversation with Mr. Fidler?

A. Mr. Fidler told me at great length what the situation was and finally I asked him, "Have you told me everything that has a bearing on it, so far as you know?" And he said he had, and I said, "My opinion is we haven't any legal evidence upon which to base a conspiracy suit; we will get ourselves in lots of trouble, and we certainly do not have legal evidence to start a criminal prosecution." He asked me why, and I told him I didn't think that any prosecutor would open up a

Grand Jury investigation, because there wasn't any sufficient public interest, and he also would be suspicious that we were trying to get him to use the criminal processes to develop evidence for us for our civil suit, and he would naturally go out and ask us to swear out an information, and we would have to base our suit, a criminal prosecution, on the evidence that this fellow Tosema or Thomasma and his relatives had told, and that he had betrayed his employer and was now double crossing his associates, and I wouldn't put any credence in anything that he said and I wouldn't base any prosecution on his testimony, and I certainly didn't want to get the company in a position where it might be sued for false arrest or defamation of character or malicious prosecution or any other charge, and the best thing for him to do in my mind was not to try it, and I was going to tell Mr. Wacker 1567 that Monday morning. That is the last I ever talked to Mr. Fidler about it.

Q. Have you any idea how long you talked to Mr. Fidler on that occasion?

A. No, but it seemed hours to me. I don't know.

Mr. Smith: That is all.

Cross Examination by Mr. Freeman.

Q. You were in the court room yesterday during Mr. Lindsey's cross examination and during the full taking of both the direct and cross examination of Mr. Fidler today, is that correct?

A. I got here about a quarter to twelve yesterday and I heard part of Mr. Lindsey's testimony.

Q. And you are testifying now fully from your memory, you have no documents or any minutes—

A. No.

Q. —of what took place?

A. No, I have no documents.

Q. Had you ever seen the Thomasma affidavit?

A. No, sir.

Q. Were you given information either by Mr. Fidler or Mr. Wacker that the Thomasma affidavit contained statements as to transactions with the Lindberg Company, with the Clark Company and several other companies as leads?

A. Yes, but I think that Mr. Wacker didn't. But I think Mr. Thomasma told me about those things, and also about some former partner of this man Larson. I didn't remember his name until he told it here, and said that he had never heard Larson talk about developing this patent and, therefore, it must not be so. I considered all those things as surmises and conjectures and suspicions which were not legal evidence in the prosecution of a criminal suit.

Q. And had you considered checking up with the Lindberg people, a reputable company here in Chicago, and getting information from that company?

A. I hadn't the slightest doubt in my mind but what this Tosema or Thomasma was telling the truth, but to prove that legally would be a different thing, and you would be checking on the truth of what he said, but it wouldn't be evidence to my mind sufficient to prosecute a third party.

Q. That is, you couldn't get a prosecutor to step in because there wouldn't be sufficient public interest—

A. He would ask us to swear out an information, a warrant, for these people, and we would have an arrest and they would be discharged because we couldn't support our information or warrant, and then we would be subject to suit for false arrest or defamation of character or malicious prosecution or anything else.

Q. I understood you to say there wasn't any question in your own mind but what Thomasma's story was correct.

A. I assumed that he was telling the truth, but there wasn't any legal evidence to support it outside of his own statement.

Mr. Freeman: That is all.

Mr. Smith: That is all.

(Witness excused.)

Mr. Smith: If your Honor please, at this time we would like to offer as Plaintiff's Exhibit 62 the pre-trial deposition of Walter Carlsen, which was taken by the Plaintiff on Tuesday, April 13th, in Chicago, Illinois.

(Which said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 62.)

Mr. Smith: I would like to point out to your Honor that the deposition bears a supplementary certificate by the notary that Mr. Carlsen refused to sign the affidavit on the grounds it might incriminate him.

As Plaintiff's Exhibit No. 63 we would like to offer the stenographic transcript of proceedings and testimony of Kenneth R. Larson, which were taken before your Honor as a pre-trial deposition.

(Said document was thereupon received in evidence by the Court and marked as PLAINTIFF'S EXHIBIT No. 63.)

Mr. Smith: I would like to state for the purpose of the record it is our intention to file all pre-trial depositions that were taken and which have not been introduced as part of our case.

At this time I would like further to move the reinstatement or your Honor's permission to have Mr. Fidler and Mr. Harry Lindsey resume as attorneys in the case, they both having completed their testimony in the case.

The Court: The motion will be granted.

Mr. Lindsey: May the Court please, there is some of this interference testimony that has not yet been offered, and there are some exhibits. I just spoke to Mr. Ooms about it; and we will enter into a stipulation, if that is agreeable, rather than take your Honor's time in offering them.

The Court: All right.

Mr. Lindsey: And the stipulation will be offered as an exhibit in evidence.

The Court: That will be all right.

Mr. Ooms: May we have one more thing? There have been a large number of documentary exhibits offered here and some referred to without offering, some were numbered possibly and referred to by number. My request is that such exhibits as have been used and referred to here that are not already offered, may be offered at the conclusion of this case rather than try to check them at this moment.

Mr. Lindsey: No objection.

Mr. Ooms: I think Mr. Hibben and I can get together and check all the exhibits.

Mr. Lindsey: I would suggest wherever we can to

substitute originals for carbons and make the record as complete as possible, and we can work that out without bothering your Honor.

Plaintiff rests, your Honor.

1572 Whereupon the Plaintiff rested its case in chief.

Mr. Freeman: No rebuttal on the part of the Defendants.

But I would like to say for the record that Mr. Joe Johnson of Snap-On, who has not been here all this week although he was here all of last week, was taken to the hospital last Sunday and is still in the hospital at Kenosha, Wisconsin. That is just to explain his absence.

The Defendants rest.

The Court: Let me ask you gentlemen a couple of questions. This Larson application, which was Number 232,723, did that finally ripen into a patent?

Mr. Ooms: Yes.

Mr. Fidler: Yes.

The Court: That was the one involved in the Interference?

Mr. Fidler: That is correct.

The Court: Was that application supported by this drawing that you have referred to as Exhibit 27?

Mr. Fidler: The testimony taken in the Interference was testimony directed to that drawing, supporting the dates of invention with respect to the subject matter, the drawing and structure shown in that patent.

1573 The Court: Then finally a patent was allowed?

Mr. Fidler: That is right.

The Court: And based upon that drawing?

Mr. Fidler: That is right.

The Court: When do you folks want to argue this?

Mr. Fidler: I may say, your Honor, that the patent claims are limited to a detail of feature shown in those drawings, but not to the subject matter broadly. The broad claims directed to that type of wrench went to the party Zimmerman in the Interference.

The Court: There was some kind of a sketch filed with the original application, or drawing?

Mr. Fidler: Well, we filed regular patent application drawings with that.

The Court: Was this attached to them?

Mr. Fidler: No. The drawing itself is not attached. It was merely evidence of that submitted in connection with the Interference.

The Court: Did it support one of the claims finally allowed?

Mr. Fidler: Not allowed in that case, no. Those claims that it supported went to the party Zimmerman. It would support, I believe, the detail claims on the so-called 1574 Larson feature, the spring-tail feature or the tail feature which did finally issue in that patent.

The Court: Well, it would support the Larson application from the standpoint of date, wouldn't it, whether it supported it from the standpoint of the mechanical drawing or not?

Mr. Fidler: Yes, that is correct, your Honor.

The Court: Isn't that correct?

Mr. Ooms: That is correct, your Honor.

The Court: Isn't that one of the points in dispute here?

Mr. Ooms: Yes.

The Court: As to when that drawing was made and by whom it was made?

Mr. Ooms: Yes, your Honor.

Mr. Fidler: That is correct.

The Court: When do you want to argue the case?

(Here followed discussion off the record.)

1575 The Court: You can argue it tomorrow afternoon. Suppose you folks get in here at three o'clock tomorrow afternoon and we will stay here. You may not be heard then, but we will stay until you finish.

(Whereupon an adjournment was taken until the following day, Friday, May 21, 1943, at the hour of 3:00 o'clock P.m.).

1577 PLAINTIFF'S EXHIBIT NO. 3.

Agreement.

This agreement made and entered into this 20 day of December, 1940 by and between Snap-On Tools Corporation, of Kenosha, Wisconsin, a Delaware corporation (hereinafter for brevity referred to as Snap-On), and Kenneth R. Larson, of Des Plaines, Illinois, and the Precision Instrument Manufacturing Co., Inc., an Illinois Corporation (hereinafter for brevity collectively referred to as Precision), Witnesseth That:

Whereas, Snap-On is the holder of equitable title under application for letters patent Serial No. 232,723, filed October 1, 1938 for a Torque Wrench structure pursuant to an agreement executed between the parties on September 28, 1938; and

Whereas, said application for letters patent has become involved in Patent Office Interference No. 77,565 with the applications of Herman W. Zimmerman Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench; and

Whereas, Precision is desirous of settling said interference by a concession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated without further contestation and expense; and

Whereas, Snap-On is willing to cooperate with Precision to the extent of re-assigning whatever title it now possesses in and to patent application Serial Number 232,723 and filed October 1, 1938 so that Precision may settle said interference with Automotive Maintenance Machinery Co. (hereinafter for brevity referred to as Ammco) who is the assignee of the entire right, title and interest in and to the Zimmerman patent applications Serial No. 175,883, filed November 22, 1937 and Serial No. 210,869, filed May 31, 1938; and

1578 Whereas, Precision requires Snap-On's acquiescence in the cancellation of said agreement dated September 29, 1938 to enable compliance with the agreements entered into between Snap-On and Ammco, on one hand, and Ammco and Precision, on the other hand;

Plaintiff's Exhibit No. 3.

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does re-assign whatever right, title and interest it now possesses in and to the Larson patent application Serial No. 232,723 to said Kenneth R. Larson and Precision Instrument Manufacturing Co., Inc., and it is agreed that this assignment shall be limited to said structure disclosed and described therein and shall not include any improvements thereon. Pursuant to the terms hereof Snap-On will simultaneously execute the attached form of assignment marked Exhibit 1, and Precision agrees that any transfer of the aforesaid patent application Serial No. 232,723 by it shall be executed only on the attached form of assignment marked Exhibit 2.

2. Precision agrees to manufacture and deliver to Snap-On torque wrenches now on order up to the time of signing this agreement, and said wrenches shall be delivered to Snap-On in accordance with and at the prices that prevailed under the agreement dated September 28, 1938. Should the number of torque wrenches now on order from Snap-On to Precision exceed six thousand (6,000) wrenches, then the royalty of ten (10%) per cent required to be paid to Amneco on all wrenches in excess of six thousand (6,000) pursuant to the terms of the agreement entered into between Amneco and Snap-On, shall be deducted from the sums due Precision for the wrenches delivered in accordance with the terms contained herein.

1579 3. Simultaneous with the execution of this agreement, Snap-On shall advance to Precision the sum of Five Hundred (\$500.00) Dollars so that this amount can be paid by Precision to Amneco, and said advance shall be deducted from funds now held by Snap-On under the agreement dated September 28, 1938.

4. Kenneth R. Larson and Precision warrant that the second Larson patent application Serial No. 317,226 and filed February 5, 1940 illustrates structural subject matter that in part was the concept of George M. Walraven, an engineer in the employ of Snap-On Tools Corporation, and agree that they will sign the necessary documents without the payment of any further consideration.

to enable Snap-On to file a joint application in the name of Kenneth R. Larson and George M. Walraven showing the identical subject matter of the Larson patent application serial number 317,226 and claiming individually and in combination the spring tail beam extension and the improved dial mechanism features. It is further agreed and understood that upon the filing of a joint application Precision will assent to the abandonment of the Larson application Serial No. 317,226 in lieu of the aforesaid substitute joint application; and said joint application shall remain the property of Snap-On. Snap-On agrees to grant unto Precision a free, non-assignable and non-exclusive license under the aforesaid joint application and any patent that may eventuate therefrom; provided, however, that Precision shall not utilize any of the teachings comprising the subject matter of application Serial No. 317,226 and of the aforesaid joint patent application in any transaction that directly or indirectly involves Amnco or its officers in any manner whatsoever.

5. Precision assents to the agreement between Snap-On and Amnco; and Snap-On assents to the agreement between Precision and Amnco subject to the full compliance of the aforesaid agreements and the terms contained herein, and hereupon Snap-On agrees to acquiesce in the cancellation of the agreement between it and Precision dated September 28, 1938, and shall thereupon refund to Precision any and all funds in its possession belonging to Precision pursuant to the terms of the aforesaid agreement dated September 28, 1938 less all necessary and legitimate expenses which have theretofore properly accrued as against said fund including the five hundred (\$500.00) dollar payment advanced herein and any royalties due Amnco.

Precision warrants that the aforesaid agreement dated September 28, 1938 did not include or cover any improvements on the Larson application Serial No. 232,723 and that such improvements that were assigned to Snap-On thereon was for considerations and pursuant to rights other than contained in the agreement dated September 28, 1938.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, re-

spectively, hereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Snap-On Tools Corporation

By J. Johnson

(Corporate Seal)

President

Attest:

Wm. A. Seidemann

Secretary

Kenneth R. Larson,

Kenneth R. Larson

Precision Instrument Mfg. Co., Inc.

By Kenneth R. Larson

President

(Corporate Seal)

Attest:

Walter Carlson

1581 State of Illinois }
County of Cook } ss.

On this 24 day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who being by me duly sworn, deposed and said that he is the President of Precision Instrument Mfg. Co., Inc., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed hereto is its lawful corporate seal.

(Notary Seal)

M. K. Hebbs

Notary Public

State of Wisconsin }
County of Kenosha } ss.

On this 23rd day of December, 1940, personally appeared before me Joseph Johnson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed

of said corporation and that the seal affixed thereto is its lawful corporate seal.

(Notary Seal) *Marguerite Ninalar*
Notary Public

My commission expires November 30, 1941.

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EXHIBIT 1.

Assignment.

Whereas, Snap-On Tools Corporation, of Kenosha, Wisconsin, is the owner of the following patent application Torque Wrench—Serial No. 232,723 Filed October 1, 1938 under a certain agreement dated September 28, 1938 with Kenneth R. Larson and Precision Instrument Mfg. Co., Inc., of Des Plaines, Illinois; and

Whereas, the aforesaid patent application is involved in Interference No. 77,565 in the United States Patent Office and pursuant to certain settlement agreements it is desired to amicably settle controversies between all parties and pursuant thereto certain reciprocal covenants have been entered into between all of the parties with full knowledge of their respective requirements thereunder; and

Whereas, Snap-On Tools Corporation has agreed to reassign the aforesaid patent application to the Precision Instrument Mfg. Co., Inc.; and Kenneth R. Larson;

Now, Therefore, to all whom it may concern, be it known that for and in consideration of One Dollar (\$1.00) to us in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, we, the said Snap-On Tools Corporation, have sold, assigned, transferred and set over, and by these presents do assign, transfer and set over, unto said Kenneth R. Larson and Precision Instrument Mfg. Co., Inc., their heirs, successors and assigns, the entire right, title and interest in and to said invention and all foreign rights to said invention, and any letters patent which may be granted therefor or thereupon.

In Witness Whereof, we have hereunto set our hands and fixed our seals this 23rd day of December, 1940.

Snap-On Tools Corporation

By J. Johnson

(Corporate Seal)

President

Subscribed and sworn to before me, a Notary Public,
this 23rd day of December, 1940.

(Notary Seal) Marguerite Ninalar
Notary Public.

My commission expires November 30, 1941.

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PLAINTIFF'S EXHIBIT NO. 4.

(Letterhead of Snap-On Tools—Kenosha, Wis.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

October 26, 1938.

Mr. Kenneth R. Larson,
Des Plaines, Illinois.

Dear Mr. Larson:

We are pleased to let you know that the Tension Wrench you have developed as per sample submitted has been approved in mechanical principle by our Engineering Department, and that we are prepared to utilize you or your company as our source of supply on Tension Measuring Wrenches, marketing such wrenches through our entire sales organization embracing 34 branches and over 500 salesmen.

Immediately upon definite advice from you that you have completed all necessary financial arrangements for production we will place with you an initial stock order for 500 Tension Wrenches in the 150-foot-pound size, to be delivered to us as the wrenches are finished in lots of 15 or more per day. Deliveries against the order to start during the first week in January, 1939. Subsequent orders will be placed with you for quantities required to meet the demand. It is understood that you will furnish the tools to us complete, but without metal packing box, at \$4.88 net each. Terms: 2% ten days, 30 days net; F. O. B. Des Plaines, Illinois.

It is further understood that the wrenches will be furnished to us under production conditions conforming with the Federal Wage and Hour Act and all other terms and conditions as set forth in the agreement which has been executed between us.

In addition to the size wrench specified on our initial

Plaintiff's Exhibit No. 7.

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order, we shall depend upon you as our source of supply for several other sizes in Tension Wrenches and, barring unforeseen construction deficiencies, we anticipate development of a substantial volume of business on this line.

Yours very truly,

Snap-On Tools Corporation,

E. W. Myers,

President.

EWM:JB

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PLAINTIFF'S EXHIBIT NO. 7.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

cc Mr. Harry C. Alberts
First National Bank Building
Chicago, Illinois

Registered Mail

November 21, 1940

Precision Instrument Co.
Des Plaines, Illinois

Gentlemen:

It has come to our attention that you are involved in some difficulties with a stockholder that may have a bearing on the outcome of the present interference between your patent application and the Zimmerman patent application owned by the Automotive Maintenance Machinery Co. Under these circumstances we hereby notify you that we shall henceforth retain from all accounts due you the sums set forth in the contract for credit to the reserve account. For some time we have waived this requirement in part, but the present circumstances change the situation entirely and cannot continue unless we have an adequate and much larger reserve than at present on hand.

Further, we may find it desirable to engage in the manufacture of a different torque wrench to fulfill prospective volume business that we can only participate in with a wrench that is not involved in any patent difficulties. Under our contract with your firm, if the patent is not granted within two years, we may undertake the manufacture of your present wrench, which we are not considering, but

at any time we are entitled to engage in the manufacture of a different wrench.

Yours very truly,

Snap-On Tools Corporation,
Assistant Secretary.

WWDaniel:EL

1585 PLAINTIFF'S EXHIBIT NO. 8.

(Letterhead of Harry C. Alberts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

October 18, 1938.

Snap-On Tools Corporation
Kenosha, Wisconsin.

Attn: Mr. Joseph Johnson, Vice President.

Re: Torque Wrench—File 11354—Kenneth R. Larson.

Dear Joe:

I am enclosing herewith carbon copy of an affidavit signed by Mr. Larson this afternoon in connection with the above entitled matter. I am retaining the original in my files for safekeeping. I understand that Mr. Larson will confer with you tomorrow morning and I want you to have this affidavit so that you may know your position in the matter.

Whatever is concluded as to financial arrangements, should not and does not alter the terms of the preliminary agreement which already has been subscribed to by Mr. Larson. There is a provision in the agreement that in the event Mr. Larson cannot proceed and his efforts to procure proper finances are futile, then you have the right to proceed to get these devices and pay him a 5% royalty as prescribed in said preliminary contract.

I think the affidavit is clear and goes as far as you possibly can insure yourself against any involvement. If you have any further questions or desire more information regarding the matter, please do not hesitate to write or call me.

With kindest personal regards, I remain

Yours very truly,

Harry C. Alberts.

HCA:EM.

1586

PLAINTIFF'S EXHIBIT NO. 8-A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

United States Patent Office.

Kenneth R. Larson
Serial No. 232723
Filed October 1, 1938
Torque Wrench

} Division 29.

Affidavit of Kenneth R. Larson.

State of Illinois }
County of Cook } ss.

Before me, the undersigned authority, duly commissioned in and for the County and state aforesaid, personally appeared before me, Kenneth R. Larson, who after being duly sworn doeth depose and say:

Affiant avers and states the fact to be that he alone conceived the structure set forth in my application serial number 232723 and filed October 1, 1938 in the United States Patent Office; that no other individual directly or indirectly contributed any concept or feature of said structure; that the only other individual involved in the reduction to practice of said structure is Jack E. Kamppenin who is my partner in the business operated under the name and style of K and L Motor Rebuilders, Des Plaines, Illinois; that whatever was contributed by said Jack E. Kamppenin was at the special instance and direction of affiant who alone conceived the structure and merely procured the assistance of said Jack E. Kamppenin in the production of certain parts as a mechanic working under the direction and supervision of affiant.

Affiant further avers and warrants that there are no other individuals involved in any manner or degree with the conception or development of structure set forth 1587 and described in the above entitled patent application; that should Snap-On Tools Corporation enter into the submitted contract already executed by affiant, affiant warrants that he will not directly or indirectly become involved with any individual, firm or corporation without the written consent of Snap-On Tools Corporation;

that he will not directly or indirectly become involved with any individual, firm or corporation to contribute to affiant's concept, structure or directly or indirectly participate in the business of furnishing the aforesaid wrenches to Snap-On Tools Corporation in the event such individual, firm or corporation is or was connected or involved in the tool or allied business or who could be even remotely construed as a competitor of or possess interests adverse to Snap-On Tools Corporation; and that this restriction not only extends to individuals, firms or corporations, but also to any of their employees or ex-employees.

Affiant makes this warranty and agrees to abide there-with upon the strength of Snap-On Tools Corporation entering into the submitted contract already executed by affiant and any final contract that may eventuate therefrom; and that this warranty and the restrictions herein stated shall constitute material and essential conditions of the contractual relationship to be entered into between affiant and Snap-On Tools Corporation.

Kenneth R. Larson.

Subscribed and sworn to before me, a Notary Public, this 18th day of October, 1938.

Esther Meltzer.

1588

PLAINTIFF'S EXHIBIT NO. 10.

(Letterhead of Harry C. Albert—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940.

Snap-On Tools Corporation
Kenosha, Wisconsin.

Attention: Mr. Joseph Johnson, President.

Re: Larson vs. Zimmerman
Interference No. 77,565
File 11484

Dear Joe:

I am enclosing herewith copy of a letter received from the attorneys for Ammco and my reply thereto. I trust that you consider my reply as a warranted statement to

make before receiving your approval in that time is of the essence and I wanted Mr. Lindsey to know that he is not clubbing anyone into submission.

I consider his letter as another example of the type of "blackmail" which Thomasma no doubt is confronted with and it happened to work successfully once so that they expect to do the same with Larson, Snap-On Tools Corporation and myself personally. I do not weaken under such conditions and, in fact, I feel that the situation requires strength rather than weakness.

I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammeo. You can tell your general counsel all that you know about the matter and that is precisely what I know. I have no more facts than you have at the present time. I would like to get the benefit of an impartial viewpoint from a legal mind who is not directly involved in this controversy for the moment.

Please bear in mind that at the conference with Messrs. Fidler and Wacker, it was admitted by Fidler that the disclosure and dealings of Ammeo with your firm was not in confidence. In other words there was no relationship of confidence between Ammeo and Snap-On Tools Corporation at any time.

Mr. Hobbs served notice on me that he is not going to continue any further in behalf of Larson because of the failure of settlement negotiations. I do not like his decision in the matter after receiving a retainer of \$250.00 from Precision, but I must accept that. I stand on record in the Patent Office as attorney for Larson as well as your firm. I cannot very well at this moment withdraw and leave Larson to the unmerciful tactics of Ammeo and their attorneys. I must give Larson an opportunity to select another attorney and this time I am not going to make any suggestions.

1589 Larson was in today and vehemently asked me to keep on as attorney of record for him as well as Snap-On Tools Corporation. I would not like to do this except for the fact that my withdrawal would give more power to Ammeo and their attorney to kill the desire of Larson to proceed. My effort all along has been to stiffen Larson's position so that he would not leave Snap-On

Tools Corporation holding the bag--contract or no contract.

Your general counsel would be in a better position to decide whether or not this would incriminate your position by having me proceed in behalf of Larson. I have been so close to the situation and settlement negotiations in the last week that I would not want to depend upon my own judgment in the matter. My judgment tells me to withdraw in behalf of Larson as soon as he can appoint another attorney and the challenge received from Mr. Lindsey as per their enclosed copy of their letter, makes me boil to think that my judgment should do the thing they want me to do, namely, withdraw.

For the present, do not release any papers, letters or other expressions directly to Larson or Precision Instrument Mfg. Co. or anyone else without these being conveyed through the writer. Carry on your commercial transactions as in the past in strict accordance with the contract. Build up your reserve and let me know your general counsel's viewpoint in the entire matter.

The reference on page 4, second paragraph, of my letter as to the responsibility of Lindsey on matters that have come to my attention, has reference to a statement made by Larson that the investigator at Desplaines approached these witnesses with the introduction that he was a Patent Office investigator. This is impersonation of a federal officer and most likely was at the suggestion of the attorney for whom they were working if this can actually be proved. Mr. Larson states that this impersonation took place when the investigator interviewed his ex-partner in the auto parts jobbing business. I cannot vouch for the accuracy of this statement.

With kindest regards, I remain

Yours very truly,

Harry C. Alberts.

HCA:EM

P. S. Advise Mr. Daniel about not releasing any papers, letters or other expressions directly to Larson or Precision without first being conveyed to me.

H. C. A.

1590

PLAINTIFF'S EXHIBIT NO. 13.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Re: Larson vs: Zimmerman—Settlement Matter
File 11580

December 18, 1940.

Conference held November 28, 1940 at office of Davis Lindsey, Smith and Shonts with Messrs. Fidler, Wacker, Allen, and Thomasma, on one hand, and Messrs. Johnson and Alberts, on the other hand. This conference was scheduled at 10:30 A. M. and the first hour involved a discussion as to whether or not Johnson would admit Precision was Snap-On and Snap-On was Precision. Unless this was understood Fidler and Wacker said they would not divulge any information concerning the alleged perjury of Larson and witnesses in his behalf. We refused to consider this as an understanding and nevertheless Fidler proceeded after a discussion about an hour to call in Thomasma and interrogate him in a more or less formal manner. Thomasma went through all the facts of his former employment by Ameco and his development of a torque wrench with Larson on a sparetime basis.

The highlights of his story is that Exhibit No. 27 was drawn by Thomasma on a Sunday afternoon and he can prove this by his brother and sister-in-law who saw him working on this drawing. Thomasma's brother is a representative of some cork block firm whose offices are above those of Mr. Fidler in the McCormick Building. (Larson testified some high school boy made the drawing for him.)

Thomasma further stated that this drawing was made by him during the early part of 1938 (Exhibit 27 has a date of 1936 thereon). Thomasma also stated that his wife knew of Carlson through patronizing his wife's beauty parlor and suggested that he be contacted for the purpose of financing this venture. Thomasma supposedly brought Carlson to Larson's basement sometime in 1938 and from all indications they met there for the first time (Carlson and Larson testified that they met in some Evanston Auto Parts store where Larson was employed in 1934 when he purchased several head gaskets two different times for his old Packard Car).

Thomasma admitted that Larson did most of the work on the wrench and that Larson contributed to some extent to the improvement which he considered to be different from and not in conflict with anything Ammco had designed or purchased up to that time. A loan was supposed to have been made from a bank to purchase an old lathe and Thomasma and Larson signed for this loan and jointly bought the lathe. This was some time in 1937.

After hearing this formal testimony which was not under oath, but a demonstration of what Thomasma would testify to, Alberts stated, openly at the conference that he was withdrawing as attorney for Larson in that he was brought into the case through Snap-On and would therefore continue to represent Snap-On in view of the fact that there apparently were charges and counter-charges to be made in this case and a conflict of interests might develop between Snap-On and Larson so that it would be best for Alberts to withdraw.

From then on, M. K. Hobbs, Esq. negotiated in behalf of Larson with Mr. Fidler in behalf of Ammco. On Thursday December 12, 1940, Hobbs called Alberts and advised that Lindsey was going to confer with him at his own office on Friday morning, December 15th and asked whether I cared to be present. I said I would and the next morning Mr. Hobbs, Mr. Lindsey, Fidler and myself conferred.

They presented a tentative draft of an agreement which involved Ammco, Snap-On Precision and Larson as parties. Up to the time of submission of this agreement, the question was always put to me as to whether or not we would permit Larson to concede priority of the Zimmerman counts in interference. In the agreement I was advised at this conference for the first time that they not only expected a concession of priority, but also Larson's first and second applications.

In view thereof, I wired Mr. Johnson who was then in Canada to stop over and see me. I then conferred with Mr. Johnson and his associates at Snap-On Tools at Kenosha on Tuesday, December 17, 1940. Mr. Larson was present at that conference in Kenosha. As a result of our conference, the letter of December 17, 1940 was written to Mr. Fidler.

Harry C. Alberts.

1592

PLAINTIFF'S EXHIBIT NO. 16.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Thomas Rafterty
1101—10 North Clark Street
Chicago, Illinois

December 26, 1940.

Dear Mr. Rafterty:

Re: Larson v. Zimmerman.

Interference No. 77,565

The parties involved in the above interference have agreed to settle the same without further contest. It will not, therefore, be necessary for you to appear and testify in this matter in response to the subpoena previously served upon you.

The subpoena served upon you required you to produce:

1. Each and every notebook or other means employed by said Thomas Rafterty in taking down stenographically and reporting testimony given orally on behalf of the party Larson in the above entitled interference by the following witnesses (before Esther Meltzer, a Notary Public, at the offices of Harry C. Alberts, 38 S. Dearborn Street, Chicago, Illinois, beginning on October 24, 1940 and ending on November 4, 1940):

Kenneth R. Larson
Walter A. Carlson
C. C. Whittaker
L. Hynes
Richard Barrgren

Henry C. Schultz
William Ladendorf
Harold Blake
R. C. Ford

2. The original copy of such testimony stenographically taken down by said Thomas Rafterty in said notebooks above referred to, and which said Thomas Rafterty has completed by 9:30 A. M. Monday, December 23, 1940.

In terminating this matter, it was agreed that you would deliver up the foregoing material, as well as all copies of the transcript of such testimony now in your possession, to Mr. Alberts. We would appreciate it if you would attend to this immediately.

Very truly yours,

F.J

CC: Mr. Harry C. Alberts
Mr. M. K. Hobbs
Mr. Fred G. Wacker

1594

PLAINTIFF'S EXHIBIT NO. 18.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement made this 16th day of January, 1941 by and between Precision Instrument Manufacturing Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal office and place of business at Desplaines, Illinois, (hereinafter for brevity referred to as Precision), and Snap-On Tools Corporation, a corporation organized and existing by virtue of the laws of the State of Delaware and having its principal office and place of business at Kenosha, Wisconsin, (hereinafter for brevity referred to as Snap-On). Witnesseth That:

Whereas, the parties are now operating under an agreement dated September 28, 1938 between Kenneth R. Larson and Snap-On Tools Corporation; said agreement having been assigned by Kenneth R. Larson to Precision; and

Whereas, under the terms of said agreement, Kenneth R. Larson and Precision were required to assign patent application serial number 232,723 and filed October 1, 1938 to Snap-On as security for the performance thereof; and

Whereas, it became necessary under patent interference No. 77,565 in the United States Patent Office entitled Kenneth R. Larson vs. Herman W. Zimmerman for Larson to concede priority of invention to Zimmerman; and

Whereas, under the terms of said concession of priority, it was necessary for Precision and Snap-On to respectively enter into agreements with the Automotive Maintenance Machinery Co. under date of December 20, 1940 whereby only 6,000 additional wrenches of the type shown and described in application serial number 232,723 and filed October 1, 1938 are to be henceforth manufactured; and

1595 Whereas, Snap-On is willing to cooperate with Precision to modify the agreement dated September 28, 1938 and to arrange for continuation of the relationship between the parties in connection with another type of torque wrench which may be permissible in the light of the separate agreements entered into by the parties to this agreement and Automotive Maintenance Machinery Co.; and

Whereas, the parties hereto entered into an agreement dated December 20, 1940 that enabled Precision to settle interference No. 77,565 with Automotive Maintenance Machinery Co.

Now, Therefore, for and in consideration of the sum of One (\$1.00) Dollar by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged and confessed, and other good and valuable considerations, including the mutual covenants, agreements, and promises hereinafter contained by the respective parties hereto to be faithfully performed, the parties hereto hereby agree as follows:

1. The parties hereby affirm the agreement entered into on December 20, 1940 to provide for the settlement of interference No. 77,565. Precision further agrees to the forfeiture of patent application serial number 317,226 and filed February 5, 1940 in the name of Kenneth R. Larson and hereby agrees to have Kenneth R. Larson assign to Snap-On a substitute application covering the same subject matter filed jointly in the name of Kenneth R. Larson and George M. Walraven; the said application being identified by serial number 374,362 and filed January 14, 1941. Title to the aforesaid identified joint application to remain in Snap-On and Kenneth R. Larson hereby acknowledges and warrants that the subject matter described and claimed therein or intended to be described and claimed therein, was the joint conception of Kenneth R. Larson and George M. Walraven.

1596 2. Precision agrees to exclusively furnish Snap-On with at least 6,000 Torque Wrenches of the present design of the type set forth in patent applications serial numbers 232,723 and 317,226 filed October 1, 1938 and February 5, 1940, respectively, and to make reasonably prompt deliveries thereon to meet the requirements of contracts now held by Snap-On with the government and others at the following prevailing prices:

Snap-On Tools
Catalog No.

Capacity

R-20	20 ft. lbs.
R-50	50 ft. lbs.
R-120	120 ft. lbs.
R-302	300 ft. lbs.
TQ-12	12½ ft. lbs.
TQ-12½	12½ ft. lbs.
TQ-15	150 ft. lbs.
TQ-50	150 ft. lbs.
TQ-51	50 ft. lbs.
TQ-80	80 ft. lbs.
TQ-81	80 ft. lbs.
TQ-352	350 ft. lbs.
602	600 ft. lbs.
1003	1000 ft. lbs.
1503	1500 ft. lbs.
3003	3000 ft. lbs.

The aforesaid wrenches which are equipped with ratchets, are priced on the basis of ratchets being furnished by Snap-On to Precision who assembles these ratchets into wrench, packs wrenches in any metal boxes furnished to it, and packages these for shipment F. O. B. Des Plaines. Special wrenches shall be furnished upon price estimates mutually established therefor and where quantities shall warrant, the aforesaid prices shall be adjusted to correspond proportionately with the presently established standard size and quantity wrench TQ15, all other sizes having been heretofore purchased in comparatively small quantities.

3. Precision hereby agrees to assign to Snap-On application serial number 374,361 filed January 14, 1941 which shall be held as security for the performance of this contract under which Snap-On shall at all times retain an exclusive license to sell the submitted torque wrench under said patent application and any patent that may eventuate therefrom. After Precision has delivered 6000 wrenches of the present design to Snap-On at the aforesaid prices and in accordance with the terms of this agreement, then Precision agrees to exclusively furnish to Snap-On torque wrenches of the design or type described and claimed or intended to be described and

claimed in application serial number 374,361 filed January 14, 1941 at prices set forth in clause 2 hereof so long as economic and market conditions prevailing at the time of the execution of this agreement shall persist or endure. Precision warrants that the torque wrenches supplied under the aforesaid application shall at least be as satisfactory from an appearance, weight and accuracy standpoint, as the wrenches heretofore supplied under contract dated September 28, 1938.

4. Should economic conditions change so as to warrant an increase or decrease in the aforesaid prices, then the parties shall have the right to make a cost study or analysis of raw materials, labor and sales expense on the basis of present conditions. Such analysis shall involve the right by Snap-On upon request at all reasonable business hours to examine the books, records, purchases, inventories and corporate records of Precision, and present market prices and conditions shall be the basis for determining the right to an increase or decrease at the request of either party. Should these records show that a price increase or decrease is justified on the basis of present prevailing prices of raw material, labor and sales expense, then a corresponding adjustment is to be made up or down determined upon present market conditions as a basis of the new price. Any new price arrived at upon the foregoing basis, shall be placed in effect after then existing sales contracts possessed by Snap-On shall have been fulfilled and in no case shall the new price become effective in less than sixty days from the date of such determination to be subscribed to by both parties.

1598 5. Precision hereby agrees to save Snap-On harmless from any expense, damages or profits occasioned by virtue of a charge of infringement predicated upon its sale of wrenches purchased from Precision of the type described and claimed or intended to be described and claimed in application serial number 374,361 or any improvements thereon. In the event Snap-On is charged with patent infringement or suit is instituted against it by virtue of its sale of wrenches purchased from Precision in accordance with the terms contained herein, then Precision agrees to sustain the expense occasioned to Snap-On by virtue of its defense of any litigation.

6. Precision hereby agrees that Snap-On may withhold one-fourth of the purchase price from each order as a

defensive patent litigation fund or reserve to be used by Snap-On in its own defense should it be named a defendant in any suit predicated upon the sale of the aforesaid wrenches purchased from Precision. When this defensive fund amounts to \$2,000.00, then Snap-On is to withhold one-eighth of the purchase price from each successive order until a fund of \$5,000.00 is accumulated. This defensive fund is to be held in trust by Snap-On and interest shall accrue thereon at the savings account bank rates in force in the City of Kenosha, State of Wisconsin. Should no suit be instituted for patent infringement against Snap-On by virtue of the sales of wrenches supplied by Precision within three years of the date of the first shipment of wrenches of the type set forth in application serial number 374,361, then this litigation fund is to be returned to Precision with whatever interest has accumulated therein at the saving account bank rates in force in the city of Kenosha, State of Wisconsin.

1599 7. If after the issuance of a patent on the aforesaid application, Serial No. 374,361, the same shall be infringed by any third parties and Precision, after demand by Snap-On that suit be instituted against such infringer or infringers, shall fail or refuse to institute and prosecute suit against such infringer, Snap-On at its option, may terminate this agreement or, at its option, may suspend purchases under this agreement and/or itself may institute and prosecute suit against such infringer, such suit to be brought in the name of Precision if Snap-On sees fit. The expense of offensive and/or defensive litigation to be paid by Precision and Snap-On shall have the right to utilize all or any necessary part of the Precision reserve fund held by it for this purpose.

8. Precision agrees to replace any and all wrenches that are defective or that become defective in use by the customers of Snap-On, and Precision unconditionally guarantees these wrenches and shall provide the same adjustment or service under the same terms and conditions prescribed by Snap-On to its customers as each individual complaint may deem necessary or proper within the discretions of Snap-On. It is further understood and agreed that should there be any disputes between the parties as to the replacement or repairs, then the decision of Snap-On shall be final inasmuch as it must satisfy the customer in any event and it is understood that customer satisfac-

tion is important to the successful merchandising of the aforesaid device. The unconditional guarantee given by Snap-On to its customers shall be computed from the time the aforesaid wrenches are actually sold by Snap-On's branches to the customer rather than the date of delivery from Precision to Snap-On, or from Snap-On to its branches.

1600 9. It is further understood and agreed that the aforesaid prices do not include ratchets that may be desired on some of the wrenches and Snap-On agrees to furnish Precision such ratchets as it desires to be incorporated on each torque wrench of the type comprising the subject matter of this agreement. The aforesaid prices include packing and delivery to Snap-On and placement of the wrenches in special containers whenever such are supplied by Snap-On. Otherwise, the usual shipping carton shall be supplied by Precision.

10. Should Precision fail to maintain an adequate supply of the submitted type of torque wrenches for Snap-On at the prescribed prices or Precision discontinues to manufacture these torque wrenches or fails to meet the workmanship and material guarantees or reasonably prompt shipments, then Snap-On may take up the manufacture of these wrenches to supply their requirements at any time that the supply is not available to them at the specified prices or Precision discontinues the manufacture of these wrenches or fails to maintain competitive prices to Snap-On that should be no more than the average of the three lowest written bids received by Snap-On from other firms for the manufacture and supply of these wrenches. Evidence of three written bids from competitive firms shall be sufficient to require Precision to reduce the prices to Snap-On to correspond with the average of the three lowest bids for manufacturing the aforesaid wrenches according to specifications prescribed by Snap-On to Precision. The price on the basis of an average of three lowest bids shall be enforced only in the event of a disagreement under the price change provisions of clause 4 hereof.

11. Precision agrees to actively prosecute the pending patent application serial number 374,361 and any and all improvements thereon at its own expense and 1601 through counsel selected by Snap-On. All improvements shall become the subject matter of this agree-

ment under the same terms and conditions without the payment of any further consideration or requirement to be specifically recited herein.

12. Any and all disputes arising under this agreement shall be submitted, at the option of either party, to three arbitrators who shall have the power to decide whether or not suit shall be brought as well as any other disputes. Upon such contingency, each party shall designate one (1) arbitrator, and these two (2) shall appoint a third arbitrator. In case either party shall fail for a period of fourteen (14) days to appoint an arbitrator, the other party shall have the right to request a judge of any United States District Court to make the appointment. In the event that the two arbitrators appointed as hereinbefore provided fail to agree upon and appoint a third arbitrator within fourteen days, then either party shall have the right to request a judge of any United States Court to make the appointment to complete the arbitration board. The expense of the arbitration shall be borne by the losing party or apportioned between the parties as the arbitrators may direct.

13. This agreement shall continue for the term of any letters patent that may eventuate from the aforesaid patent application or for a term of five years should patent protection be unobtainable under application serial number 374,361 or upon any patent eventuating from the aforesaid patent application being declared invalid by a court of competent jurisdiction.

14. Upon the full performance of the conditions set forth in the agreements entered into by the parties on December 20, 1940 and the agreement with Automotive Maintenance Machinery Co. dated December 20, 1940, 1602 the agreement dated September 28, 1938 shall become merged herein and upon execution of this agreement Snap-On shall refund to Precision any reserves less proper deductions accumulated under said last named contract.

In Witness Whereof, the parties hereto have caused these presents to be executed in their name by their duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written, and all the covenants to be performed by Precision shall also be the

personal obligations of Kenneth R. Larson and Walter A. Carlson.

Walter A. Carlson

Kenneth R. Larson

Precision Instrument Manufac-
turing Company,

By

President.

Attest:

Secretary.

Snap-On Tools Corporation,

By Joseph Johnson,

President.

(Seal)

Attest:

Wm. A. Seidemann,

Secretary.

1603 State of Illinois }
County of Cook } ss:

I, _____ a Notary Public, in and for the County and State aforesaid, do hereby certify that Kenneth R. Larson and Walter A. Carlson, personally and as President and Secretary, respectively, of Precision Instrument Manufacturing Company, known to me to be the same persons whose names are subscribed to the foregoing instrument personally and as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument personally and as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this _____ day of January, 1941.

Notary Public.

State of Wisconsin }
County of Kenosha } ss:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Joseph Johnson and William A. Seidemann, President and Secretary, respectively, of Snap-On Tools Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 21st day of January, 1941.

Marguerite Niccolai,
Notary Public.

(Seal)

1604. PLAINTIFF'S EXHIBIT NO. 19.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Rider to Agreement Executed on January 16, 1941, Between Snap-On Tools Corporation and Precision Instrument Manufacturing Company.

This rider made this 26th day of March, 1942 by and between Precision Instrument Manufacturing Company, a corporation organized under and existing by virtue of the laws of the State of Illinois, and having its principal office and place of business at Desplaines, Illinois (hereinafter for brevity referred to as Precision), and Snap-On Tools Corporation, a corporation organized and existing by virtue of the laws of the State of Delaware and having its principal office and place of business at Kenosha, Wisconsin (hereinafter for brevity referred to as Snap-On), shall constitute a modification of the Agreement executed

between the parties on January 16, 1941, in consideration of the change in economic conditions in accordance with the conditions prescribed in clause 4 of the aforesaid Agreement.

The parties hereto agree that clauses 2, 3 and 4 (pages 3 and 4) of the aforesaid Agreement dated January 16, 1941 shall be modified and corrected to read according to attached sheets containing new clauses 2, 3 and 4 which shall be substituted for, supersede and constitute a part of the Agreement dated January 16, 1941 in lieu of pages 3 and 4 thereof, these being as follows:—

1605 2. Precision agrees to exclusively furnish Snap-

On with at least 6,000 Torque Wrenches of the present design of the type set forth in and improvements on patent applications serial numbers 232,723 and 317,226 filed October 1, 1938 and February 5, 1940, respectively, and to make reasonably prompt deliveries thereon to meet the requirements of contracts now held by Snap-On with the government and others at the following prevailing prices:

Snap-On Tools Catalog No.	Capacity	Stock Limit Guarantee	Price
R-20	20 ft. lbs.	Submit bid	
R-50	50 ft. lbs.	Submit bid	
R-120	120 ft. lbs.	Submit bid	
R-302	300 ft. lbs.	Submit bid	
TQ-12	12½ ft. lbs.	500	
TQ-12½	12½ ft. lbs.	250	
Tq-15	150 ft. lbs.	1000	
TQ-50	50 ft. lbs.	500	
TQ-51	50 ft. lbs.	250	
TQ-352	350 ft. lbs.	250	
602	600 ft. lbs.	125	
1003AL	1000 ft. lbs.	10	
2003AL	2000 ft. lbs.	10	
3003AL	3000 ft. lbs.	1	

The "stock limitation guarantee" prescribed above for each model wrench, shall not constitute a minimum order from Snap-On to Precision, but the maximum amount Snap-On shall be required to order out in any two (2) year period from the date of the first order covering such

wrenches under this rider. When Snap-On places an order for any of the aforesaid wrenches at any time, then Precision shall have the right to make up a number in excess of the quantity ordered to equal the "stock limit guarantee" for each model. When the amount prescribed as the "stock limit guarantee" is exhausted, Precision shall again be entitled to make up a number in excess of the amount thereafter ordered to equal the "stock limit guarantee". Snap-On agrees to order out the amount remaining on hand in any two-year period from the date that an order was placed and a "stock limit guarantee" inventory has been made up by Precision to fill such an order. This merely provides an opportunity for Precision to make up a quantity number of wrenches at any one time to reduce manufacturing costs and still insure that these will be taken out within a two-year period from the date Snap-On places an order on any model for which there is no standing "stock limit guarantee" inventory.

Such of the aforesaid wrenches which are equipped with ratchets, are priced on the basis of ratchets being furnished by Snap-On to Precision who assembles these ratchets into wrench, packs wrenches in any metal boxes furnished to it, and pack these for shipment F.O.B. Des-plaines. Special wrenches shall be furnished upon price estimates mutually established therefor shall correspond as closely as possible to the prices of the nearest standard wrench size, and where quantities shall warrant, the aforesaid prices shall be adjusted to correspond proportionately with the presently established standard size and quantity wrench TQ15, all other sizes having been heretofore purchased in comparatively smaller quantities. On all models not designated with the letters "AL" (meaning models with a light indicator) light attachments to be furnished and installed complete for an extra \$1.80.

3. Precision hereby agrees to assign to Snap-On application serial number 374,361 filed January 14, 1941 which shall be held as security for the performance of this contract under which Snap-On shall at all times retain an exclusive license to sell the submitted for the wrench under said patent application and any patent that may eventuate therefrom. After Precision has delivered 6000 wrenches of the present design to Snap-On at the aforesaid prices

and in accordance with the terms of this agreement, then Precision agrees to exclusively furnish to Snap-On torque wrenches of the design or type described and claimed or intended to be described and claimed in application serial number 374,361 filed January 14, 1941 at prices set forth in clause 2 hereof so long as economic and market conditions prevailing at the time of the execution of this agreement shall persist or endure. Precision warrants that the torque wrenches supplied under the aforesaid 1607 application shall at least be as satisfactory from an appearance, weight and accuracy standpoint, as the wrenches heretofore supplied under contract dated September 28, 1938. The finish and material of all wrenches shall correspond with government regulations covering all manufacturers of tools or as competition shall prescribe.

4. Should economic conditions change so as to warrant an increase or decrease in the aforesaid prices, then the parties shall have the right to make a cost study or analysis of raw materials, labor and sales expense on the basis of present conditions. Such analysis shall involve the right by Snap-On upon request at all reasonable business hours to examine the books, records, purchases, inventories and corporate records of Precision and present market prices and conditions shall be the basis for determining the right to an increase or decrease at the request of either party. Should these records show that a price increase or decrease is justified on the basis of present prevailing prices of raw material, labor and sales expenses, then a corresponding adjustment is to be made up or down determined upon present market conditions as a basis of the new price. Any new price arrived at upon the foregoing basis, shall be placed in effect after their existing sales contracts possessed by Snap-On shall have been fulfilled and in no case shall the new price become effective in less than sixty days from the date of such determination to be subscribed to by both parties.

1608 It is further agreed and understood that in all other respects the contract dated January 16, 1941 remains in full force and effect. In witness whereof, the parties hereto have caused these presents to be executed in their name by their duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written, and all the covenants to be performed by Preci-

sion shall also be the personal obligations of Kenneth R. Larson and Walter A. Carlson.

Walter A. Carlson

Kenneth R. Larson

Precision Instrument Manufacturing
Company,

By

President.

Attest:

Secretary.

Snap-On Tools Corporation,

By Joseph Johnson,

President.

(Seal)

Attest:

Wm. A. Seidemann,

Secretary.

1609 State of Illinois }
County of Cook } ss:

I, H. True Wilson, a Notary Public, in and for the County and State aforesaid, do hereby certify that Kenneth R. Larson and Walter A. Carlson, personally and as President and Secretary, respectively, of Precision Instrument Manufacturing Company, known to me to be the same persons whose names are subscribed to the foregoing instrument personally and as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument personally and as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 26th day of March, 1942.

Notary Public.

State of Wisconsin }
County of Kenosha } ss.:

I, Marguerite Niccoali, a Notary Public, in and for the County and State aforesaid, do hereby certify that Joseph Johnson and William Seidemann, President and Secretary, respectively, of Snap-On Tools Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and severally acknowledged that they executed and delivered said instrument as President and Secretary of said Company and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act and as the free act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 19th day of March, 1942.

Marguerite Niccoali,
Notary Public

(Seal)

1616 PLAINTIFF'S EXHIBIT NO. 20.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

January 31, 1941

David M. Krichiver, Esq.
Attorney At Law
139 North Clark Street
Chicago, Illinois.

Re: Precision Instrument Manufacturing
Company—File 11595

Dear Sir:

Precision Instrument Manufacturing Company has turned over to me your letters bearing the following dates:

~~April 27, 1940~~

July 15, 1940

December 10, 1940

January 9, 1941

January 29, 1941

My client, Snap-On Tools Corporation, has a interest in this matter insofar as an existing contract has been

breached and until such a time as Precision Instrument Manufacturing Company can discharge its obligations to my client, I am authorized by Snap-On Tools Corporation to participate in the affairs of the Precision Instrument Manufacturing Company in every way possible to see that they are not interfered with and present commitments can be fulfilled to the best of their ability.

I have a fairly good history of the events that culminated into the interference settlement between Precision Instrument Manufacturing Company, on one hand, and Automotive Maintenance Machinery Company, on the other hand. It appears that you have been an adverse participant in the affairs of the Precision Instrument Manufacturing Co. as a nominal shareholder, possessing no more than five shares, with an interest that glaringly is self-serving and to those who apparently have a better insight of the situation, said adverse participation was short-sighted and not only impaired the interests of Precision Instrument Manufacturing Company, your client, George Thomasma, but also yourself.

There are a great many people who are too short-sighted to become aware of the fact that their activities are tantamount to the old expression "cutting off your nose to spite your face". In my opinion you have done an admirably good job in doing this for yourself and to say the least not even the opponents of Precision Instrument Manufacturing Company who alone benefitted, respect you for your participation. This is natural in that no one admires a wrong doer and that is precisely the classification that I must assign to you.

As a lawyer, you should know that only constructive participation helps everyone concerned and thus far your efforts have been self-destructive. Of course, having only five shares involved you appear to have everything to gain and nothing to lose by attempting to profit beyond the pro rata representation of your stock interest. If everything you attempt to indicate is true, then not only Precision Instrument Manufacturing Company, but also its directors and stockholders will become personally liable for creating a situation that was instrumental in the failure to fulfill the terms of the agreement with Snap-On Tools Corporation. As a stockholder, I definitely will turn to you to carry your share of the personal responsibility for such unauthorized action which you participated in.

not only as attorney for Mr. Thomasna, but also in your own behalf as a stockholder.

Your letter sounds like that of a dictator of Hitler's style. You seem to take it upon yourself as a five-share stockholder to be the judge, prosecutor and jury. I happen to have had a first-hand statement from Mr. Thomasna in the presence of the principals of Automotive Maintenance Machinery Company and its attorneys, wherein Mr. Larson was given credit for the major part of the development that entered into the result constituting the basis of the patent application which was assigned to Automotive Maintenance Machinery Company under the terms of the settlement that was necessitated through your own action and your action alone. I should say that if your dictatorial command in your letter of January 29, 1941 was written by those authorized in behalf of Precision Instrument Manufacturing Company and directed to you, then perhaps the demand would not appear so unwarranted nor unreasonable.

Under the circumstances, you had better bring suit immediately in that I feel that Precision Instrument Manufacturing Company would have the basis for a meritorious counterclaim that no doubt will result in the revocation by a court of competent jurisdiction of the certificate of stock now possessed by you.

Yours very truly,

HCA:EM

Harry C. Alberts.

1612

PLAINTIFF'S EXHIBIT NO. 21.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

April 27, 1940

Precision Instrument Manufacturing Co.
1843 Miner Street
Desplaines, Illinois

Gentlemen:

I am the owner of five shares of the capital stock of your corporation and am desirous of obtaining a certificate for five shares of stock in my own name.

Kindly advise me when and where I may obtain this.

Yours very truly,

DMK:ER

1613

July 15, 1940

Mr. Walter Carlson
c/o Precision Manufacturing Company
1419 Miner Street
Des Plaines, Illinois

Dear Sir: -

Will you kindly tell Mr. Larsen that I would like to talk to both of you in my office concerning the Precision Instrument Company.

I think it would be to your best interest to see me at which time I can outline to you my future course of action.

Yours truly,

David M. Krichiver.

DMK:LM

1614

December 10, 1940

Precision Instrument Mfg. Co.
1846 Miner Street
Des Plaines, Illinois

Gentlemen:

In connection with an alleged board of directors meeting supposedly held on November 16, 1940, you are hereby advised and notified that my client, George Thomsma, has not been sent a copy of the minutes of that meeting, and that he has no knowledge of what has supposedly taken place at that meeting, if any meeting was held, and that until such time as he receives a copy of the minutes of that meeting, if any was held, he does hereby object to each and every one of the acts of the board of directors and he will so continue to object to each and every one of the acts and deeds of the board of directors which supposedly took place on November 16, 1940.

Should you desire to submit a copy of the minutes of that alleged meeting, the same may be sent either directly to him or to him in care of my office.

Yours truly,

David M. Krichiver.

DMK:LM

1615. Form 3806 (Rev. Jan. 21, 1935)

Receipt for Registered Article No. 318561

Registered at the Post Office indicated.

Fee paid 15 cents Claim postage (Postmark of)

Declared value Surchage paid, \$ Chicago, Ill.

Return Receipt fee Spl. Del. fee (Sta. E)

Delivery restricted to addressee: Jan 9 1941

in person, or order Fee paid Registered

Accepting employee will place his initials in space indicating restricted delivery. (Mailing Office)

Postmaster, per

Return Receipt Requested.

The sender should write the name of the addressee on back of proof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic registry fees range from 15 cents for indemnity not exceeding \$5 up to \$1 for indemnity not exceeding \$1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and surcharges and as to the registry fees chargeable on registered parcel post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to \$1.20. Indemnity claims must be filed within one year (C. O. D. six months) from date of mailing.

1616

January 9, 1941

Precision Instrument Mfg. Co.

1846 Miner Street

Des Plaines, Illinois

Attention: Mr. Walter Carlson, Secy.

Gentlemen:

It is my understanding that the by-laws of this Corporation provide for an annual stock holders meeting to be held on the second Monday in January with the time and place of said meeting usually set by the directors.

The law of the State of Illinois also provides that notice of the time and place of the annual meeting of stock holders shall be given at least ten days prior to such meeting.

As yet, I have not received any notice for this annual meeting which should be called for January 13, 1941.

I am hereby making demand upon you to arrange for said meeting, and advise me of the date thereof. If I do not hear from you within the next few days, I shall take such action as is available to me.

Yours truly,

David M. Krichiver.

DMK:LM

1617

January 29, 1941

Mr. Kenneth Larsen
c/o Precision Instrument Mfg. Co.
1846 Miner Street
Des Plaines, Illinois

Dear Sir:

As a stockholder of the Precision Instrument Manufacturing Company, I am hereby making demand upon you to turn in to the corporation for cancellation the 260 shares of stock you now hold in the Precision Instrument Manufacturing Company on the grounds that there is no consideration given by you for these shares.

Should you fail to turn in your stock for cancellation within the next three days I shall file suit against you on behalf of myself and the other stockholders similarly situated and the corporation to enjoin you from acting for and on behalf of the corporation and to have the court cancel your holdings.

Yours very truly,

David M. Krichiver.

DMK:LM

1618

PLAINTIFF'S EXHIBIT NO. 21.

January 29, 1941

Mr. Walter Carlsen
c/o Precision Instrument Mfg. Co.
1846 Miner Street
Des Plaines, Illinois

Dear Sir:

I have this day made a demand upon Kenneth Larsen to turn in to the corporation for cancellation the 260 shares

of stock which he holds on the grounds that said stock was issued to him without consideration.

I am hereby requesting you as secretary and treasurer of the corporation to request Mr. Larsen to turn in his stock for cancellation on the same grounds.

In the event Mr. Larsen's shares of stock are turned in for transfer on the books of the corporation, you are hereby notified to refuse such request on the grounds that said stock had been issued without consideration and are therefore null and void, or be personally liable for those shares.

I have advised Mr. Larsen that if he fails to turn in his stock within the next three days I will institute a suit against him enjoining the transfer of the shares he holds and asking the cancellation of the shares issued to him.

I am still awaiting notice of the annual meeting of shareholders, which according to the by-laws of this corporation should have been held on the second Monday of January. If I do not hear from you within the next few days concerning a meeting of the shareholders, I shall write the other stockholders and arrange a meeting as provided for in the by-laws and in the Statutes of the State of Illinois.

Yours truly,

DMK:LM

David M. Krichiver.

1620

PLAINTIFF'S EXHIBIT NO. 22.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 26, 1940

Mr. Harry C. Alberts
38 South Dearborn Street
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson v. Zimmerman

Interference No. 77,565

I enclose a copy of a letter I have just written to Mr. Rafferty, the reporter, as suggested during our conference of December 24th.

Very truly yours,

F:J

Enclosure

1621 PLATNTIFF'S EXHIBIT NO. 23.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 31, 1940

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference.

I wish to thank you for your letter of December 30th enclosing a corrected assignment of the Larson application Serial No. 232,723 from Snap-On to Precision and Larson.

This assignment now appears to be in proper form and I intend to send it, together with the other assignment (Larson and Precision to Autom-Aye) and the concession of priority, to the Patent Office in the very near future.

As requested in your letter, I return herewith the originally executed assignment.

I appreciate very much your efforts respecting the statements to be furnished under the settlement agreements. These statements should be furnished promptly and I know that you are doing everything possible to that end.

As to the testimony and Thomasma statement matters, I am holding everything subject to your call.

With kindest personal regards, I am—

Very truly yours,

R. E. Fidler.

F. J.
Enclosure

Feb. 23, 1943.

K. R. LARSON

TORQUE WRENCH

Filed Jan. 14, 1941

2,312,104

2 Sheets-Sheet 1

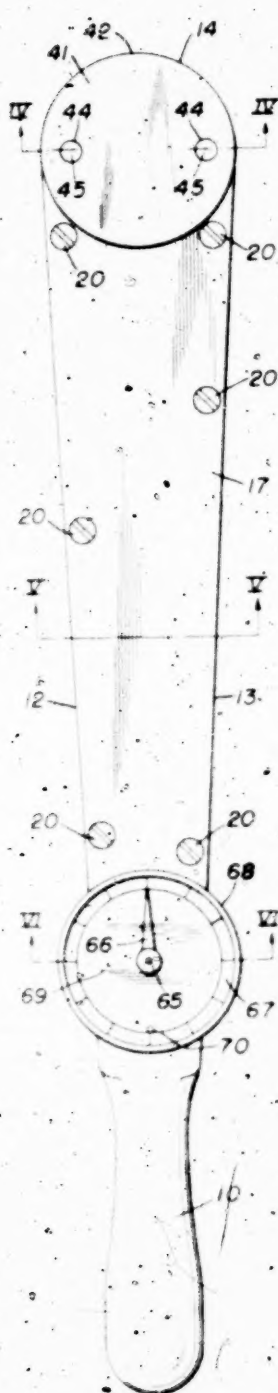


FIG 1



FIG 2

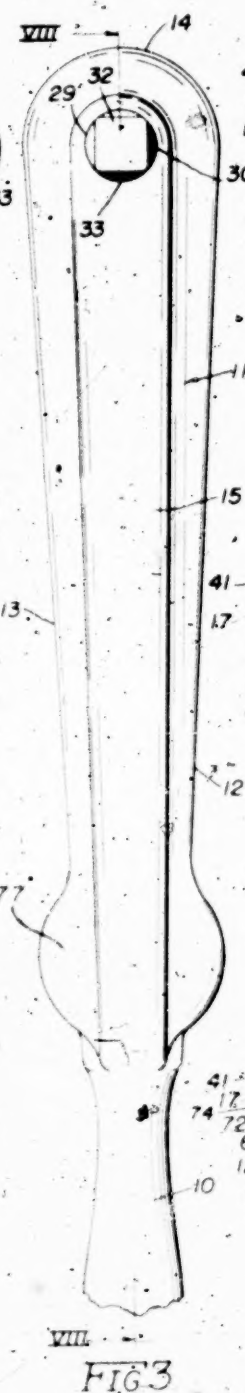


FIG 3

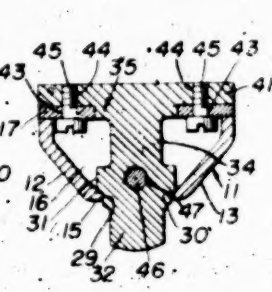


FIG 4

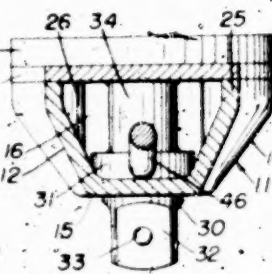


FIG 5

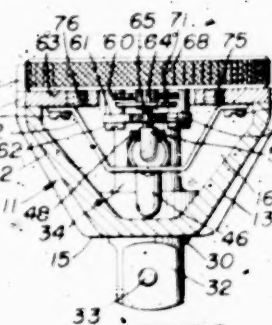


FIG 6

INVENTOR
KENNETH R. LARSON

BY *Louis O. Heintz*
ATTORNEY

Feb. 23, 1943.

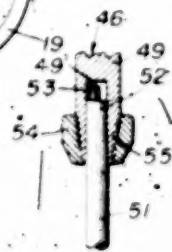
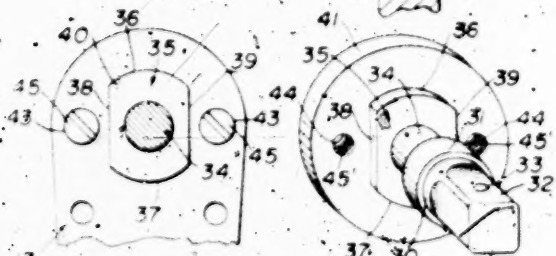
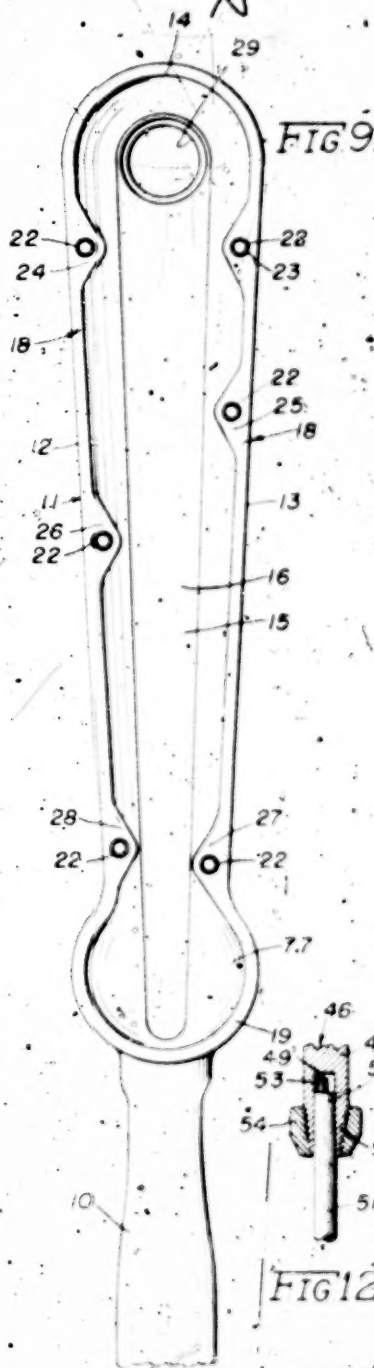
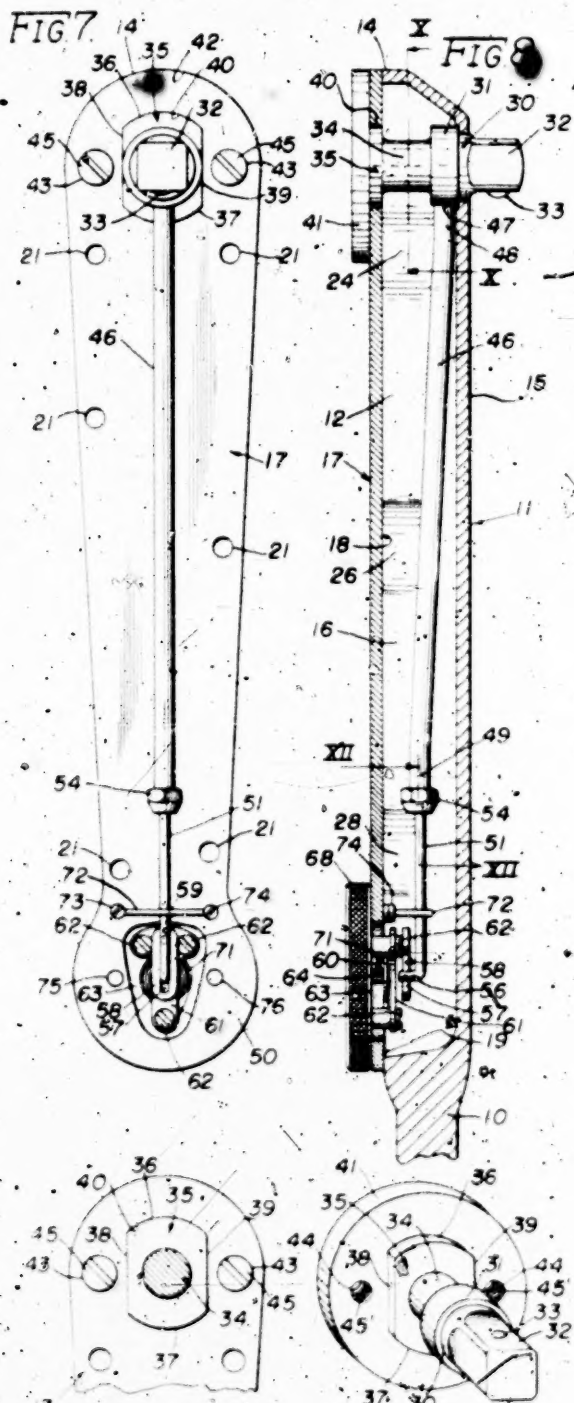
K. R. LARSON

TORQUE WRENCH

Filed, Jan. 14, 1941:

2,312,104

2 Sheets--Sheet 2



INVENTOR
KENNETH R LARSON

81

ATTORNEY

1624

PLAINTIFF'S EXHIBIT NO. 25.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

390

Department of Commerce
United States Patent Office

To all persons to whom these presents shall come, Greeting:

This Is to Certify that the annexed is a true copy from the records of this office of the Original Petition and Oath, in the matter of the Letters Patent of Kenneth R. Larson, assignor to Snap-On Tools Corporation, Number 2,312,104, Granted February 23, 1943, for Improvement in Torque Wrenches.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this eighth day of May, in the year of our Lord one thousand nine hundred and forty-three and of the Independence of the United States of America the one hundred and sixty-seventh.

Conway P. Coe,

Commissioner of Patents.

(Seal)

Attest:

C. G. Rains,

For Chief of Division.

1625 (Stamp) Mail Division Jan 14 1941 U S Patent Office.

(Stamp) U. S. Patent Office Jan 22 1941 Division 36.

In the United States Patent Office,

Petition

To the Commissioner of Patents:

Your petitioner, Kenneth R. Larson, a citizen of the United States and a resident of Desplaines, in the County of Cook, and State of Illinois, whose post-office address is 1206 Center Street, Desplaines, County of Cook, and State of Illinois, United States of America, prays that letters

patent may be granted to him for the improvements in a Torque Wrench set forth in the annexed specification.

The undersigned hereby appoints Harry C. Alberts, Esq., Register No. 12,438, of 38 South Dearborn Street, (First National Bank Building), Chicago, State of Illinois, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Kenneth R. Larson.
Kenneth R. Larson.

1626

Oath.

State of Wisconsin }
County of Kenosha } ss:

Kenneth R. Larson, the above named petitioner, being sworn, deposes and says that he is a citizen of the United States, and a resident of Des Plaines, County of Cook, and State of Illinois, that he verily believes himself to be the original, first and sole inventor of the improvements in a Torque Wrench described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by him or his legal representatives or assigns in any country foreign to the United States.

Kenneth R. Larson.
Kenneth R. Larson.

Subscribed and sworn to before me, a Notary Public, this 26th day of December, 1940.

Marguerite Meislor,
Notary Public.

My Commission expires November 30, 1941.

1627

PLAINTIFF'S EXHIBIT NO. 26.

(Letterhead of Automotive Maintenance Machinery Co.,
North Chicago, Ill.)

June 30, 1941

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

We happen to know that Precision are still manufacturing wrenches. Our information is to the effect that they are working about six men steadily.

Inasmuch as clean-handed Joe Johnson does not like us very well I suggest that you write Precision and Snap-On and ask them the status of the matter in question; and when they will respectively cease manufacturing and buying wrenches that infringe our patents.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Fred G. Wacker,

Pres.

fgw/ms

1628

PLAINTIFF'S EXHIBIT NO. 29.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 6, 1940

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson v. Zimmerman—Intf. 77,565 Snap-On
Tools Corporation and Precision Instrument
Manufacturing Co.

Mr. Frederick G. Wacker, President of Automotive Maintenance Machinery Co., owner of the Zimmerman application involved in the above interference, is quite anx.

ious to dispose of this interference situation at an early date. Mr. Wacker is particularly concerned because of the existing trade situation respecting the form of wrench in question. It is his position that, due to the nature of the competition that he must meet with respect to the wrench, he is being additionally damaged each day that the matter is delayed. I appreciate your situation, which involves, no doubt, dealing with groups whose interests have become adverse, and I have explained that fully to Mr. Wacker. I am sure that you understand my position and I feel certain that you too want to dispose of the matter as soon as possible.

I took up the matter with Mr. Wacker as soon as possible after our conference last Monday, and he informed me that it would be satisfactory to terminate the interference as proposed by you, — namely, by Larson conceding priority to Zimmerman and by payment to Automotive Maintenance Machinery Co. of a sum equal to a certain royalty per wrench for wrenches already made and wrenches on order and to be made in fulfillment of orders already given, and further agreement to discontinue the manufacture and sale of the wrench as soon as the orders on hand had been filled.

In talking to Mr. Wacker, I asked for his proposition respecting royalty, at the same time pointing out that you are interested in settling the matter quickly and on as reasonable a basis as possible. It was and now is Mr. Wacker's position that the original offer as to royalty should come from Precision and Snap-On. His specific instructions, as given to you on the telephone by my secretary, were:

"Mr. Wacker will consider any proposition that is substantial, that is in good faith, and is underwritten by Snap-On. He wants their idea as to what they are willing to offer in order to meet those conditions."

In other words, any settlement would necessarily have to include both Precision and Snap-On, particularly if a full and complete release is given to both concerns. Also, Precision's status is such that any arrangement would have to be guaranteed or underwritten by Snap-On, so to speak.

If Mr. Wacker does not accept the offer originally proposed, he will undoubtedly make some suggestions. In that event it may be necessary to get our principals to

gether in conference so that all questions may be disposed of at one time.

1630 I am still confined at home but I am quite sure that I will be in my office next Monday morning and I will be glad to cooperate with you in every possible way with the thought of bringing this matter to an immediate conclusion.

With kindest personal regards, I am

Very truly yours,

F:J

R. E. Fidler.

1631 PLAINTIFF'S EXHIBIT NO. 30.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

Mr. Harry C. Alberts
38 South Dearborn Street
Chicago, Illinois

December 18, 1940

Dear Mr. Alberts:

Re: Larson v. Zimmerman Interference No. 77,565

We are serving on you herewith a demand that a copy of the transcript of testimony of the witnesses Kenneth R. Larson, Landen C. Hymes, William J. Ladendorf, Clifford Whittaker and Walter Carlson be delivered to us not later than Friday morning, December 20, 1940.

Coupled with the demand is a notice of the taking of testimony. Our first witness will be the reporter, Mr. Thomas Rafferty, whom we are serving with a subpoena this day.

Pursuant to the notice, we will begin taking of testimony at 9:30 o'clock Monday morning, December 23, 1940.

Our client has informed us that it desires to prosecute this interference with all possible speed. We have advised them that they are fully justified in demanding speed in view of the situation, concerning which you are fully informed.

1632 For your information, we also advise that, at the conclusion of the taking of testimony here, we will proceed to Kenosha, Wisconsin, to take several depositions there. We will give you notice of these depositions later.

Very truly yours,

L:L

Harry W. Lindsey Jr.

CC: Mr. W. K. Hobbs

1633 PLAINTIFF'S EXHIBIT NO. 31.

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

December 18, 1940

Mr. W. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

Dear Mr. Hobbs:

Re: Larson v. Zimmerman Interference No. 77,565

Merely to keep you fully advised, I am enclosing a copy of my letter of this morning to Mr. Alberts, together with a copy of the demand and notice of taking depositions.

I am sorry that it is necessary to proceed, but in view of the excessive demands of Snap-On, particularly in the light of all the circumstances, there is nothing else for us to do.

Very truly yours,

L.L.J.

Harry W. Lindsey, Jr.

1634 PLAINTIFF'S EXHIBIT NO. 32.

(Letterhead of Harry C. Alberts—Chicago.)

December 18, 1940

Haight, Goldstein and Hobbs
209 South La Salle Street
Chicago, Illinois

Attention: Mr. M. K. Hobbs

Re: Larson-Zimmerman Interference No. 77,565—
File 11484

Dear Mr. Hobbs:

I am enclosing herewith copy of notice of taking testimony served upon me and am handing it to you for any further action you may deem fit as attorney for Larson.

Further, please find enclosed a substitute power of attorney so that you may proceed with the interference or otherwise protect Mr. Larson's interests as such may appear.

At a conference held on November 28, 1940 with Mr. Fidler and his clients, Mr. Frederick G. Wacker, Mr.

Allen, as representatives of the Automotive Maintenance Machinery Co., on one hand, and Mr. Joseph Johnson and the writer, as representatives of Snap-On Tools Corporation, on the other hand; I stated that I would withdraw as attorney for Kenneth R. Larson in view of the alleged charges and counter-charges that certain testimony of Larson and Carlson was not the entire truth and that because of this collateral issue, the future prosecution of the interference might develop a conflict of interests between Snap-On Tools Corporation and Kenneth R. Larson. For that reason, I do not feel justified in continuing as attorney for Mr. Larson.

It is my recollection that on November 29, 1940, you were retained by Mr. Larson to represent his interests and since that time negotiations were had by you with Messrs. Lindsey and Fidler of Davis, Lindsey, Smith and Shontz. I ask, therefore, that you proceed to file the substitute power of attorney in the United States Patent Office and thus relieve me of any further responsibility as the present attorney of record for Kenneth R. Larson in Interference No. 77,565.

1635 You will recall that I requested that my withdrawal as attorney of record be made known to the Patent Office on November 29, 1940 or as soon thereafter as a substitute power of attorney could be filed, but you were of the belief that the interference would be settled and there would be no need for any formal withdrawal as attorney of record in interference no. 77,565.

Further, I wish to advise that my client, Snap-On Tools Corporation, shall be ready and willing to re-assign Larson's patent application serially numbered 232,723 to Larson just as soon as Mr. Larson can furnish tangible security to indemnify Snap-On Tools Corporation for any damages occasioned to it by virtue of Larson's or his nominee's inability to comply with the terms of the agreement of September 28, 1940.

Please notify Messrs Larson and Fidler to direct all future notices to you rather than the writer.

Yours very truly,

Harry C.

HCA:BM

Cc: Mr. Harry W. Lindsey, Jr. of
Davis, Lindsey, Smith and Shontz
Snap-On Tools Corporation

1636

PLAINTIFF'S EXHIBIT NO. 33.

December 18, 1940

Precision Instrument Mfg. Co.

and

Kenneth R. Larson

1846 Miner Street

Des Plaines, Illinois

Gentlemen:

We talked to Mr. Larson this morning after the receipt of a copy of a letter of December 17, 1940, written by Harry C. Alberts, attorney for Snap-On Tool Corporation to Davis, Smith, Lindsey and Shonts. To the principles of settlement discussed by Mr. Fidler, Mr. Lindsey, Mr. Alberts and ourselves, the letter referred to above injects additional elements which the attorneys for Automotive Maintenance Machinery Co. flatly refuse to accept. Apparently all efforts at settlement have failed. The attorneys for the party Zimmerman in Interference No. 77,565 have today served notice of taking of testimony beginning December 25, 1940 at 9:30 A. M.

We are disappointed that the efforts to settle have come to naught. We put earnest and vigorous effort into securing a settlement which would leave it open to Precision to proceed in business and with release to it and to Mr. Larson from all claims for damages arising out of the interference and the incident circumstances. This we could have secured. We sought also to secure freedom of interference in the manufacture and sale of existing orders, and protection to customers for orders already filled and those on hand. This we could have secured. We sought also to get the unchallenged right to make, use and sell the clutch and indicating mechanism, the subject of a Larson application not in interference. This we could have secured. We sought also to get the return of the stock held by George Thomasma. This we could have secured without cost to Precision. In our judgment the settlement proposed should have been accepted by Snap-On and by yourselves. We so advised you.

Without the settlement, Precision is in a precarious position. Between the upper millstone of Amco and nother millstone of Snap-On, the outlook for the future is not sanguine.

1637. We told Mr. Larson a week or so ago that if settlement could not be effected, we could not go into or assume any responsibility in the interference. Our schedule of engagements and trials for regular clients make it impossible to do so. We also made the same statement to Mr. Alberts in the presence of Mr. Lindsey and Mr. Fidler. Quite properly, therefore, in serving a notice of the taking of depositions, the attorneys for Amco and Zimmerman addressed it to the attorney of record in the interference, sending a copy to us "merely to keep you fully advised".

If you intend to proceed with the interference, it will be necessary either to have Mr. Alberts continue or to secure some other counsel. We think you should give very serious consideration to whether you desire to spend any additional funds in the interference.

So that you may be fully advised in respect to the notice, a copy is enclosed herewith. You will observe that in acknowledging service Mr. Alberts added to the original served upon him the words which appear on your copy in longhand. The statement "substituted by M. K. Hobbs November 28, 1940" is not correct.

A copy of this letter is sent to Mr. Alberts.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:FS

Enclosure

1638

PLAINTIFF'S EXHIBIT NO. 34.

(Letterhead of Haight, Goldstein & Hobbs—
(Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940.

Mr. Harry C. Alberts,
38 South Dearborn St.,
Chicago, Illinois.

Dear Mr. Alberts:

Re: Larson-Zimmerman Interference
No. 77,565, File 11484.

I told Mr. Larson a week or more ago that if the above matter could not be settled, we were not in a position to

proceed to represent him. We made the same statement to you last Saturday, the 14th, in the presence of Mr. Fidler and Mr. Lindsey. We are therefore unwilling and unable to accept or to file your substitute power of attorney, which we return herewith.

We received yesterday a copy of the demand and notice served upon you by the attorneys for Zimmerman, which copy was sent to us by said attorneys "merely to keep you (us) fully advised". We very much regret that the matter has not been settled. It was and is our judgment that settlement upon the principles discussed at the conference in this office on Saturday last attended by you, Mr. Lindsey and Mr. Fidler was for the best interests of all of the parties concerned.

In accordance with your letter, we will advise Mr. Larson that it is your client's desire to re-assign the Larson application Ser. No. 232,723, which we understand is the application in interference; but that this desire is conditioned upon Mr. Larson's furnishing tangible security to indemnify Snap-On for any damages occasioned by inability to comply with the terms of the contract of September 28, 1940. Under the circumstances, the condition imposed seems to us unreasonable. Further we know of no security available.

Inasmuch as you sent a copy of your letter to us to Mr. Lindsey, in which letter you ask us to notify him and Mr. Fidler to direct all future notices to us, we are sending a copy of this letter to Mr. Lindsey; and also a copy to Mr. Larson.

Yours very truly,

Haight, Goldstein & Hobbs

AKH:FS—Enclosure.

1639

PLAINTIFF'S EXHIBIT NO. 35

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Kenneth Larson,
Precision Instrument Mfg. Co.,
1864 Miner St.,
Des Plaines, Illinois.

December 19, 1940.

Dear Mr. Larson:

We enclose herewith a copy of a letter written today to Mr. Alberts. I still believe that you and Precision might

effect a settlement with Amco, which settlement would require a concession of priority; but this cannot be given unless and until the application involved in the interference is re-assigned to you or to your nominee.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:FS.
Enclosure.

1640

PLAINTIFF'S EXHIBIT NO. 36

(Letterhead of Davis, Lindsey, Smith & Shonts—
Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 23, 1940.

Mr. M. K. Hobbs,
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference.

Confirming our telephone conversation of last Saturday,

I enclose two copies of the Automotive-Precision-Larson agreement. I also enclose the original and two copies of a proposed assignment covering transfer of the Larson application to Automotive, together with the original and two copies of a concession of priority by Mr. Larson to Mr. Zimmerman.

The original and duplicate-originals of this agreement were sent to Mr. Wacker Saturday for his approval and execution. I expect to have these back in my hands early tomorrow morning.

I also sent the Automotive-Snap-On agreement to Mr. Alberts for transmission to Snap-On, the duplicate-original of such agreement being sent to Mr. Wacker. As I am informed the signed copies of these agreements will be in the hands of the respective attorneys early tomorrow morning. As I further understand, all parties expect to have all preliminary matters taken care of by tomorrow morning so that the matter can be finally disposed of at that time.

I would appreciate it if you would let me have, before tomorrow morning if possible, a copy of the cross-release with respect to Mr. Thomasma that you are preparing. I would also appreciate it if you would let me see a copy of the assignment by Snap-On transferring the Larson application to Precision. This, of course, is important to Automotive from the standpoint of title.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F.J.

Enclosures.

1642

PLAINTIFF'S EXHIBIT NO. 37.

(Letterhead of Davis, Lindsey, Smith & Shonts—
Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 26, 1940.

Mr. M. K. Hobbs,
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

Dear Mr. Hobbs:

Re: Larson v. Zimmerman

Interference No. 77,565.

I enclose a copy of a letter that I have just written to Mr. Rafferty, who reported the Larson testimony. I believe this letter covers all the material that was to be turned over to Mr. Alberts.

I have forwarded the signed copies of the Automotive-Precision-Larson agreement to Automotive in order that they may be initialed opposite the changes made on page 4 thereof. Mr. Wacker, President of Automotive, has approved the changes in question.

Very truly yours,

R. E. Fidler.

F.J.

Enclosure.

1643 PLAINTIFF'S EXHIBIT NO. 38

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. Harry C. Alberts,
38 South Dearborn St.
Chicago, Illinois.

December 26, 1940.

Dear Alberts:

Re: Larson-Zimmerman Interference.

I told you on the 24th that on behalf of Precision I would like to have a more formal assignment of the Larson application involved in the interference than the one which you furnished to us in connection with the general settlement agreement. I have prepared such assignment, which is copied verbatim from the one prepared by you, except as to the execution and acknowledgment parts. I may be extra cautious in making this request, but it will not be difficult for you to comply with; and I do not wish the burden of a complaint cast upon me or upon Precision that we did not secure a self-proving assignment.

The original and a copy of the assignment herein proposed are enclosed.

Yours very truly,

Haight, Goldstein & Hobbs,
By

MKH:FS.
Enclosure.

1644 PLAINTIFF'S EXHIBIT NO. 39

(Letterhead of Davis, Lindsey Smith & Shonts—
Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Mr. M. K. Hobbs,
Haight, Goldstein & Hobbs,
209 South La Salle Street,
Chicago, Illinois.

December 28, 1940.

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference.

I am pleased to return herewith the fully executed copy of the Automotive-Precision-Larson agreement which you gave to me last Tuesday for initialing by Mr. Wacker.

You will note that Mr. Wacker has initialed the changes on page 4.

As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready.

Wishing you a Happy and Prosperous New Year, I am

Very truly yours,

R. E. Fidler.

F.J.

Enclosure.

1645

PLAINTIFF'S EXHIBIT NO. 40

(Letterhead of Harry C. Alberts—Chicago.)

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 28, 1940.

Haight, Goldstein and Hobbs,
209 South LaSalle Street,
Chicago, Illinois.

Attention: Mr. M. K. Hobbs.

Re: Assignment from Snap-On Tools Corporation to Precision Instrument Manufacturing Company of Patent Application Serial No. 232,723 File 11580.

Dear Mr. Hobbs:

I am enclosing herewith new assignment from Snap-On Tools Corporation to Precision Instrument Manufacturing Company of application serial number 232,723 filed October 1, 1938.

This assignment is being re-submitted to correct the name of the assignee and to provide a complete notarial acknowledgment of the assignor's signature.

Please see that the assignment heretofore submitted is returned to the writer.

Yours very truly,

Harry C. Alberts.

HCA:EM.
Encl.

1646

PLAINTIFF'S EXHIBIT NO. 41.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 30, 1940.

Precision Instrument Manufacturing Company,
1846 Miner Street,
DesPlaines, Illinois.

Attention: Mr. Larson.

Gentlemen:

You will recall that the settlement agreement with Automotive was changed in one particular on page 4. These changes have been initialled by Mr. Wadler on a completely executed duplicate of the agreement. Such agreement is handed to you herewith.

Please send to me promptly the statement required to be made under this agreement. I am asked for it daily by Mr. Fidler.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:ES.
Enclosure.

1647

PLAINTIFF'S EXHIBIT NO. 42.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 30, 1940.

Mr. R. E. Fidler
Davis, Lindsey, Smith & Shonts,
332 South Michigan Ave.,
Chicago, Illinois

Dear Mr. Fidler:

We enclose herewith a corrected assignment of Larson application Ser. No. 232,723 from Snap-On to Precision and Larson. The corporate name of Precision now appears correctly and we believe the assignment to be self-proving. The date of execution is the 20th of December with

acknowledgment on the 27th. Will you please return to us the assignment originally handed you. It will serve no useful purpose to you and we wish to return it to Mr. Alberts at his request, for such disposition as he sees fit.

We acknowledge in today's mail a receipt from you of a fully executed copy of the Automotive Precision-Larson agreement, with certain changes which were made therein initiated by Mr. Wacker.

I am jogging Snap-On and Precision for the statements required to be furnished to you under the settlement agreements.

Yours very truly,

Haight, Goldstein & Hobbs,

By M. K. Hobbs.

MKH:FS

Enclosure

(Stamp:) Received Dec. 31, 1940. Davis, Lindsey, Smith & Shultz.

1648

PLAINTIFF'S EXHIBIT NO. 43.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

January 2, 1941

Mr. Harry C. Alberts

38 South Dearborn St.

Chicago, Illinois

Dear Mr. Alberts:

You will recall that the first assignment given to Larson and Precision incorrectly gave the corporate name of the latter and that the execution and acknowledgment of the assignment did not make it self-proving. Consequently you gave us another assignment. We therefore return to you the assignment first submitted.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:FS

1649 PLAINTIFF'S EXHIBIT NO. 44.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

Mr. R. E. Fidler
332 South Michigan Ave.
Chicago

January 4, 1941

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

We send you herewith an original holographic statement of Precision of wrenches on order. He have kept a photo-static copy for our files.

Yours very truly,

Haight, Goldstein & Hobbs,

By M. K. Hobbs,

MKH:FS
Enclosure

(Stamp) Received Jan. 6, 1941. Davis, Lindsey, Smith & Shouts.

1650 Statement of Wrenches on Order & Not Filled Dec. 20, 1940, Pursuant to Agreement of Dec. 20, 1940, with (illegible).

Date of Order	Order No.	No. of Wrenches Ordered	No. of Wrenches not yet delivered
9-27-39	13110	8	2
6-27-40	18072	1886	377
10-10-40	19503	1500	1225
11-8-40	20050	821	821
11-11-40	20055	1	1
11-12-40	20084	2490	2490
11-13-40	20117	14	12
11-26-40	20359	1	1
12-2-40	20485	3	3
11-1-40	20494	1500	1500
12-13-40	20799	2	2
		8226	6434

Precision Instrument Mfg. Co.,

Walter Carlsen,

Sec. Treas.

1651. PLAINTIFF'S EXHIBIT NO. 45.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

January 6, 1941

Dear Mr. Hobbs:

Re: Larson-Zimmerman Interference

I wish to thank you for your letter of January 4th enclosing an original photographic statement of Precision of wrenches on order, according to the Automotive-Precision-Larson interference settlement agreement recently entered into.

The original statement has been forwarded to Automotive and I have retained a photostatic copy of the same in my file.

Very truly yours,

F.J.

R. E. Fidler.

1652. PLAINTIFF'S EXHIBIT NO. 46.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

Mr. Merville K. Hobbs
Haight, Goldstein & Hobbs
209 South La Salle Street
Chicago, Illinois

July 2, 1941

Dear Mr. Hobbs:

Re: Precision—Automotive Agreement Respecting Torque Wrenches

Mr. Frederick G. Wacker of Automotive Maintenance Machinery Co. has asked me to determine whether or not Mr. Larson and Precision Instrument Manufacturing Company of Des Plaines, Illinois, have completed the manufacture of torque wrenches permitted under the Automotive-Larson-Precision agreement entered into on Decem-

ber 23, 1940, in connection with the termination of the Larson-Zimmerman Interference No. 77,565.

Any information that you can give me respecting the status of this matter will be greatly appreciated.

With kindest regards, I am

Very truly yours,

F:J

R. E. Fidler

1653 PLAINTIFF'S EXHIBIT NO. 47.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

July 3, 1941

Precision Instrument Mfg. Co.
Des Plaines, Illinois

Attention: Mr. Larson

Gentlemen:

We have an inquiry from the attorneys for Automotive Maintenance Machinery Co. inquiring whether you have completed the manufacture of torque wrenches permitted under the Automotive-Larson-Precision agreement entered into on December 23, 1940 in connection with the termination of the Larson-Zimmerman interference.

We feel that the inquiry is a proper one. If you will advise us of your answer, we will forward it to Mr. Fidler.

Yours very truly,

Haight, Goldstein & Hobbs

MKH:FS

By

1654 PLAINTIFF'S EXHIBIT NO. 48.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Precision Instrument Manufacturing Co.,
Des Plaines, Illinois)

July 16, 1941.

Mr. M. K. Hobbs
Haight, Goldstein & Hobbs
209 S. LaSalle St.
Chicago, Illinois.

Dear Mr. Hobbs:

We have your letter of July 3, 1941 and our records show that since signing the contract with Automotive Mainte-

nance Machinery Co., we delivered to Snap-On Tools Corporation 4,948 wrenches, and there are still 1052 to be delivered just as soon as we have sufficient steel available to complete these wrenches. This makes the total of 6000 wrenches within the limit of the settlement contract.

Snap-On Tools Corporation originally ordered 6,434 wrenches, but have reduced Order No. 20494 calling for 1500 150' lb. wrenches to 1066.

This gives you the information that is requested.

Yours very truly,

Precision Instrument Mfg. Co.

By Kenneth R. Larson

1655

PLAINTIFF'S EXHIBIT NO. 49.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

July 21, 1941

Raymond D. Fidler, Esq.
332 South Michigan Avenue
Chicago, Illinois

Dear Mr. Fidler:

We enclose a copy of a letter dated July 16, 1941, from Precision Instrument Manufacturing Co., in respect to the wrenches still to be built under the agreement with Automotive Maintenance Machinery Co.

Yours very truly,

Haight, Goldstein & Hobbs,

By M. K. Hobbs

MKH:FS

1636

PLAINTIFF'S EXHIBIT NO. 50.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

December 19, 1940

Mr. Harry C. Alberts,
38 South Dearborn St.
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson-Zimmerman Interference.

Mr. Larson first consulted us on November 28, or 29, 1940. We immediately took steps to settle that matter and its attendant charges and counter-charges. From the date mentioned until the service of notice for taking testimony yesterday by the attorneys for Zimmerman, no steps or proceedings of which we are aware, were taken in the interference, save for the efforts being made to adjust the matter.

In these efforts and negotiations we represented Larson and Precision Instrument Mfg. Co.

We understand that with the possibility of adverse interests arising between Snap-On Tools Corporation and Larson, you quite properly wish to withdraw as attorney for Larson. We have so advised Larson, and also of the necessity of his engagement of other counsel to represent him.

Yours very truly,

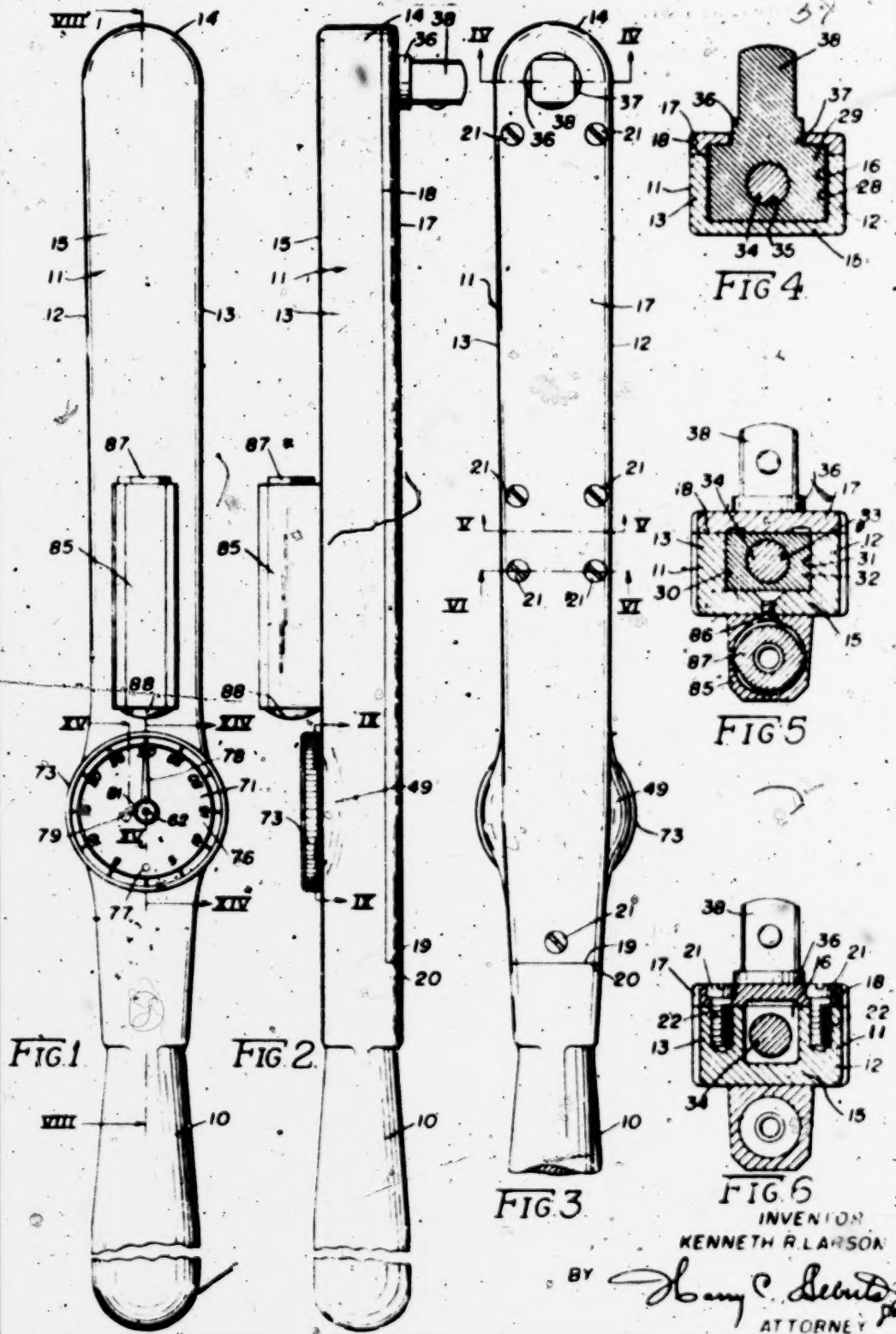
Haight, Goldstein & Hobbs,

By

MKILFS

LOW OFFICES
HARRY C. ALBERTS
PATENT, TRADE MARK, COPYRIGHT
LEGAL COMPETITION AND CORPORATION LAW
FIRST NATIONAL BANK BUILDING
CHICAGO, ILL.
TELEPHONE REX-1000

FILED



INVENTOR
KENNETH R. LARSON

BY *Harry C. Alberts*
ATTORNEY

LETTER
HARRY C. ALLEN
 PATENT, TRADE MARK, COPYRIGHT
 JAMES CONSTRUCTION AND CONSTRUCTION LAB
 FIRST NATIONAL BANK BUILDING
 CHICAGO, ILL.

FIG 7

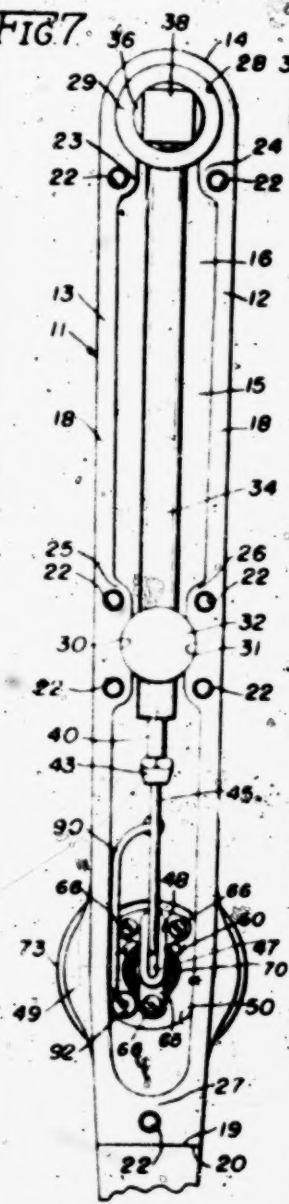


FIG 8

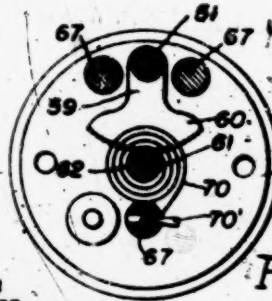
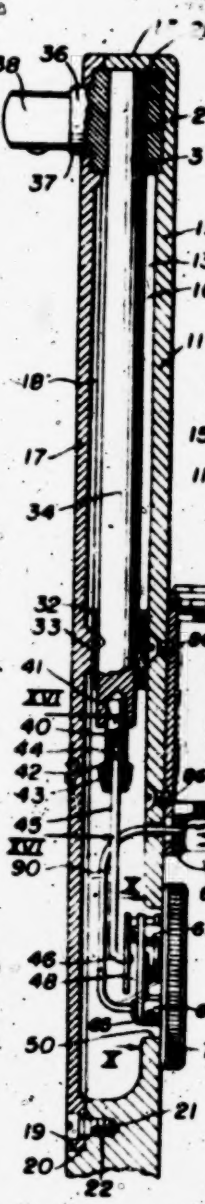


FIG 10

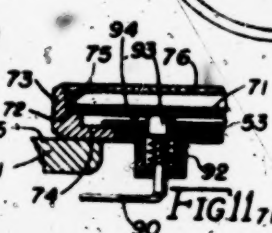


FIG 11

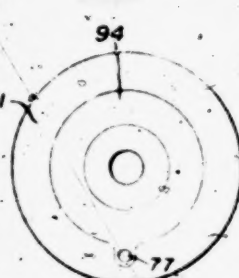


FIG 12

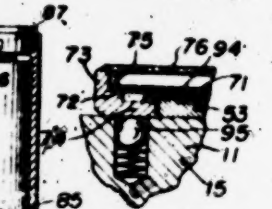


FIG 13

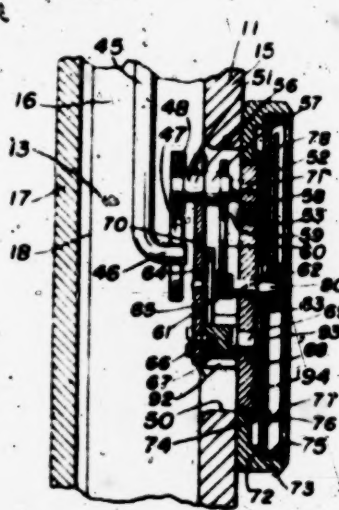


FIG 14

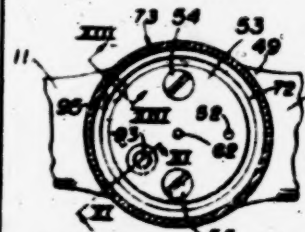


FIG 9

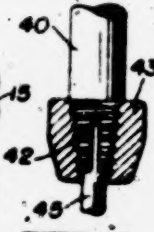


FIG 16



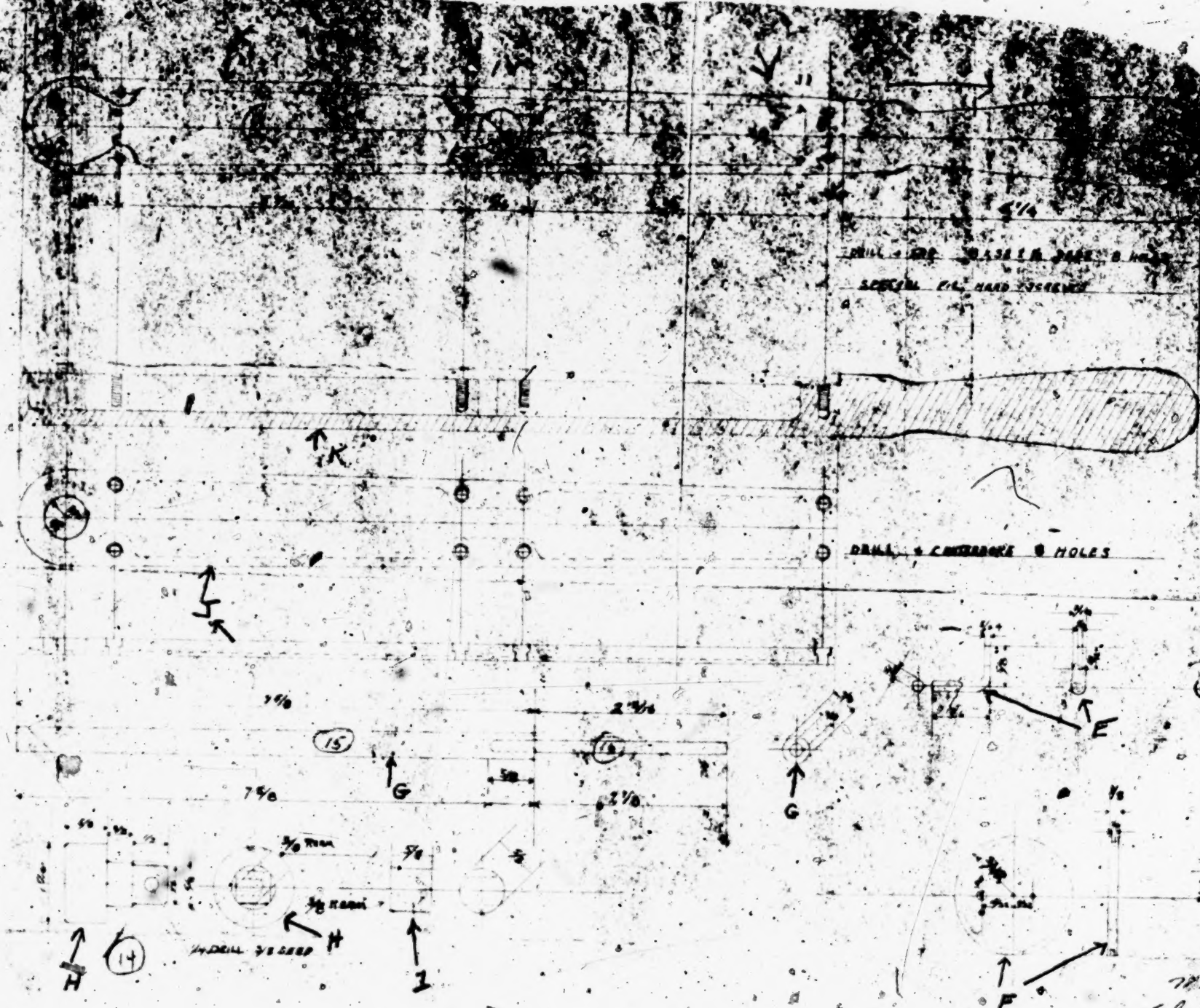
FIG 15

INVENTOR
KENNETH R. LARSON

BY *Larry C. Smith*
 ATTORNEY

Person's Exhibit

SPECIAL NICKEL
MILBY STEEL
HEAT TREATED



May 20, 1964
Edward J. Johnson
Ronald J. Ford
James R. ...

PRECISION INSTR. MFG. CO. ET AL
CIVIL ACTION NO. 4382
DET. EOL NO. 9

Notary Public

Person's Exhibit
No. 24
10-2
-200

Page 6 of 32

Page 6 of 32

FILED

AUG 11 1954
CLERK

NO. 111111

PLAINTIFFS EXH. 1

PLAINTIFFS EXH. 1

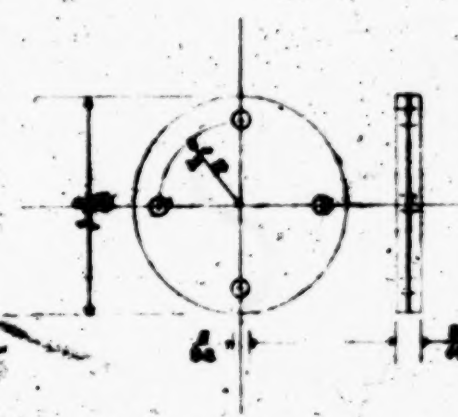
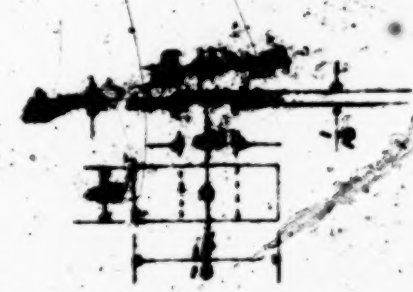
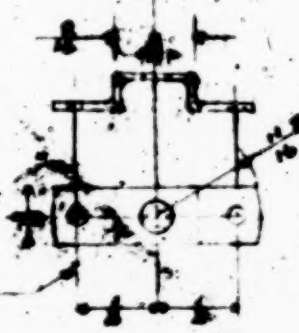
57

Book - On

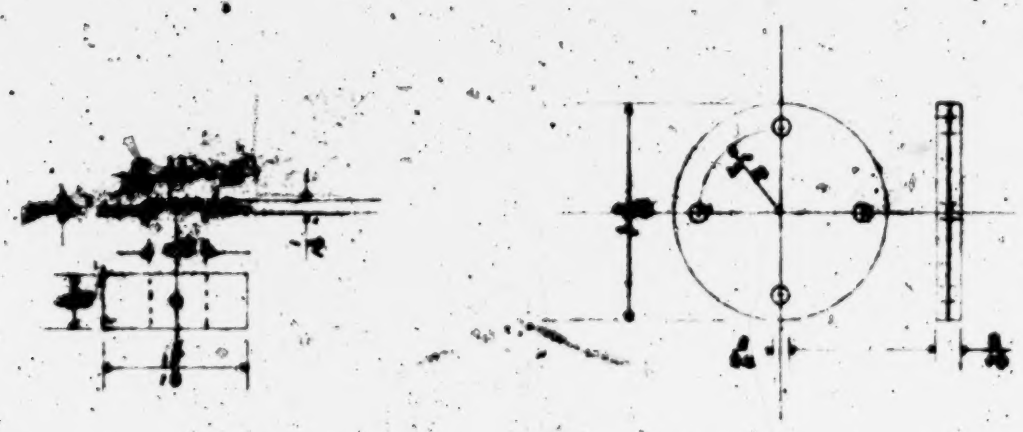
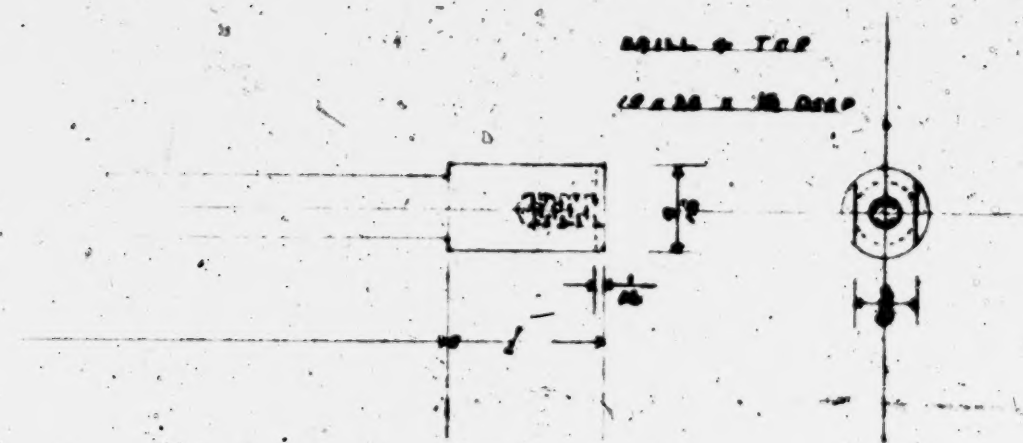
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Page 6 of 32



899



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FILED

AUG 6 - 1943

AT 10 O'CLOCK
ROY L. JOHNSON
CLERK

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco, California

Presented by Mr.

PLAINTIFF'S EXHIBIT NO 58

1662

PLAINTIFF'S EXHIBIT NO. 59.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(In pencil:) Tentative settlement submitted by Fidler & Lindsey to Hobbs.

Minimum Terms for Total Settlement.

1. Larson and Precision give Zimmerman flat concession of priority.
2. A royalty of ten per cent (10%) of Snap-On's net selling price of wrenches to trade on wrenches heretofore sold and hereafter to be sold on orders already taken.
3. No more orders for such wrenches to be taken.
4. Acknowledgment of validity of Zimmerman patent and agreement of Precision and Snap-On not to infringe.
5. Release by Automotive of any and all other claims of every nature and kind.

Alternative Proposition.

1. Flat concession of priority to Zimmerman.
 2. No release by Automotive of any kind or nature.
- Time for Acceptance or Rejection of Either Proposition Expires 5:00 P. M., Thursday, December 12, 1940.

1663

PLAINTIFF'S EXHIBIT NO. 60.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.,
North Chicago, Ill.)

June 3, 1940

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mrs. Fidler:

Re: Larson vs. Zimmerman

I am pleased to note that Larson is "out" in so far as the claim directed to the gauge coupling feature of our wrench is concerned.

You state that if the interference goes forward there

will be only two claims involved. What makes you feel that the interference might not go forward?

How long do you think it will take to wind it up?

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery
Co.,

By Fred G. Wacker

Fred G. Wacker,

fgw/ms

Pres.

1664 PLAINTIFF'S EXHIBIT NO. 61.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

May 31, 1940.

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Attention: Mr. Frederick G. Wacker

Dear Fred:

Re: Larson vs. Zimmerman

As I told you the other day, the party Larson's attorney failed to make one of our claims within the time set by the Patent Office, and the Patent Office then ruled that he was not entitled to contest an interference with respect to said claim. Larson's attorney, however, came forward in an attempt to make the claim which he had previously failed to make in the face of the Patent Office ruling that he had no right to make it, and when he did that I filed a memorandum strenuously objecting to any such practice.

The Patent Office agrees with me in this matter, as you will note from the enclosed copy of the Patent Office's communication, dated May 29th, just received in connection with this matter. Therefore, if the interference goes forward, only two claims will be involved and Larson is out, so to speak, so far as the claim directed to the gauge coupling feature of your wrench is concerned.

With kindest personal regards, I am

Very truly yours,

F:B

Enc.

R. E. Fidler

1666 PLAINTIFF'S EXHIBIT NO. 61A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

Div. 36--7892 McFayden/R

Davis, Lindsey, Smith &
Shonts,

1901 McCormick Building
Chicago, Illinois

May 29, 1940

Paper No. 18

Interference No. 77,565

Larson

vs.

Zimmerman

The party Zimmerman has filed a memorandum in opposition to an alleged belated presentation of an interference count by the party Larson (claim 18 ~~or~~ Larson).

In the decision on motion, of March 11, 1940, paper #9, the Examiner granted the admission of a count proposed by Zimmerman (as his claim 30), provided certain alterations indicated by the Examiner be made therein, and the decision went on to state, page 4:—"a period of thirty days is set from the date of this decision in which the proposed count, amended as above suggested, may be presented by the parties."

The party Zimmerman presented the claim above referred to within the thirty day period.

The party Larson presented in his application the claim 18 above referred to under date of May 17, 1940, and the failure of Larson to present the claim in the thirty days specified in the decision (paper #9) is the gravaman of Zimmerman's opposition.

On March 18, 1940 the party Larson petitioned for rehearing, which was denied by the Examiner on April 8, 1940, paper #13, and the party Larson argues that at the time of filing this petition he thought it stayed the thirty day period allowed in paper #9 for presentation of the claim.

1667 In the view of the Examiner the position taken in Zimmerman's memorandum of opposition is correct, and the party, Larson by implied disclaimer, has relinquished his right to proposed claim 30 of the original motion.

It is well established as necessary for determination of interferences, that the conflicting parties must make suggested claims within the time allowed, under pain of disclaimer. The intentions of the party are not controlling.

Turning to Larson's argument concerning the petition for rehearing acting as a stay against the time limit of paper #9, the Examiner is constrained to agree with the opposing party Zimmerman. Rule 123 is quite specific and clear on the matter of effecting a stay of proceedings, and Larson's impressions to the contrary cannot prevail.

Nor does the fact that in paper #15 the Examiner, corrected an omission of paper #9 by setting a time limit in which Larson might present two additional claims, affect the above holding. The operation of disclaimer operates independently in each instance. If one claim be suggested under Rule 96 to a party, and he fails to make the claim, and later another claim be suggested to the same party for a proposed second interference; his failure to make the first claim will not estop him from making the second claim and vice versa, his making the second claim would not re-establish his right to make the first.

The party Larson is therefore held to have impliedly disclaimed the subject-matter of the original Zimmerman claim 30.

The interference will be reformed in due course as to the remaining admissible counts.

Examiner; Div. 36.

1668

PLAINTIFF'S EXHIBIT NO. 64-A.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

STIPULATION.

It is stipulated between counsel for the respective parties that Plaintiff's Exhibit No. 64 is a certified copy of the Petition, Specification, Oath and Drawings of the Larson application Serial No. 232,723, as originally filed on October 1, 1938 (which application matured into Larson patent No. 2,279,792, in suit—Plaintiff's Exhibit No. 65); that the written description of said application as filed is the same as the description of the printed patent as issued except that the words "or head" in line 34, second column, page 1 of the patent, and the words "or turning" appear

ing in lines 20 and 21 of column 1 of page 2 of the printed patent, did not appear in the description of the application as filed; that the drawings of the application as filed and the drawings of the issued patent are the same; that the claims of said application as filed were as follows:

1669 1. In a torque wrench, the combination with a handle member, of a turning head member operatively connected to said handle member, a torque resisting beam interposed between said handle member and said turning head member, and calibrated indicating means operatively connected to an extremity of said resisting beam to measure the flex of said torque resisting beam.

2. In a torque wrench, the combination with a handle member, of a turning head member journaled in one extremity of said handle member, a torque resisting beam anchored in said turning head member, a supporting mount associated with said handle member and anchoring said beam intermediate the extremities thereof, and torque indicating means operatively connected to the free extremity of said beam.

3. In a torque wrench, the combination with a handle member, of a turning head member journaled in one end of said handle member, a torque resisting beam anchored in said turning head member, a mount associated with said beam intermediate the extremities thereof and journaled in said handle member, and calibrated indicating means operatively connected to the free extremity of said beam.

4. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated torque resisting rod interposed between said handle member and said turning head member, a rod mount journaled in said handle member to freely receive said rod therethrough, and calibrated indicating means operatively connected to the free extremity of said rod.

5. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, and torque indicating means operatively connected to the

free extremity of said rod which is displaced responsive to applying force to said handle means.

6. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

1670 7. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount for extension along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means.

8. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount for extension along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

9. In a torque wrench, the combination with a member,

of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

10. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

1671. 11. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free ex-

tremity of said last named rod which is displaced responsive to applying force to said handle means.

12. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

13. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisting rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

14. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical torque resisted rod of uniform diameter anchored at one extremity thereof to said head member, a bushing mount reciprocally associated with said rod intermediate the extremity thereof, said bushing mount being journaled in

said handle member, said elongated rod terminating in a free extremity beyond said bushing mount, a smaller rod of uniform diameter projecting from the free extremity of said elongated rod for extension along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means into said chambered handle member and cooperating with said pin connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

1672 and that Larson's Oath as filed was in the usual form, all as shown by Plaintiff's Exhibits Nos. 64 and 65.

o Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff.

August 5, 1943.

Will Freeman,
Casper W. Ooms,
Attorneys for Defendants.

August 5, 1943.

1674 PLAINTIFF'S EXHIBIT NO. 68.

(Filed Aug. 6, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

STIPULATION WITH RESPECT TO EXHIBITS.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that:

1.

A. Two volumes of deposition testimony taken in Interference No. 77,565 and comprising the original ribbon copies of the depositions of the witnesses—

Henry C. Schultz

Richard W. Barggren

Harold Blake

Ronald Ford

Landen C. Hymes (incomplete)

be marked and received in evidence as part of the record in this action as Defendants' Exhibit 10, along with the volume comprising the incomplete deposition testimony of Kenneth R. Larson given in said Interference and already offered at the trial of this action as Defendants' Exhibit 10.

B. A file of documentary exhibits which comprises certain of the documentary exhibits offered in evidence in connection with the deposition testimony in Interference No. 77,565, be marked and received in evidence as part of the record in this action as Defendants' Exhibit 106. This file of documentary exhibits, identified by their interference exhibit numbers, comprises—

Larson Exhibit No. 1—Schultz sketch of casting.

Larson Exhibit No. 2—Sales invoice dated 8/24/34.

Larson Exhibit No. 3—Sales invoice dated 11/6/35.

Larson Exhibit No. 4—Sales invoice dated 5/11/36.

Larson Exhibit No. 5—Sales invoice dated 11/23/37.

Larson Exhibit No. 25—Barggren sketch of wrench.

Larson Exhibit No. 26—Ford sketch of testing equipment.

Larson Exhibit No. 29—Hymes sketch of wrench and testing scale.

Larson Exhibit No. 30—Canceled check of Ladendorf dated June 20, 1938.

Larson Exhibit No. 34—List of officers and directors of Precision Instrument Mfg. Co.

Larson Exhibit No. 35—Larson's sketch of farm scale testing apparatus.

Larson Exhibit No. 36—Larson's sketch of back lash beam.

Larson Exhibit No. 42—Larson's sketch of rear extension of beam of Larson Exhibit 41.

Larson Exhibit No. 51—Snap-On letter of October 26, 1938 to Larson.

(Same as Plaintiff's Exhibit 4.).

Larson Exhibit No. 52—Preliminary agreement dated September 28, 1938 between Larson and Snap-On.

(Same as Defendants' Exhibit 61.)

Zimmerman Exhibit A—Signature of Kenneth R. Larson.

Zimmerman Exhibit B—Same as Larson Exhibit No. 52.

Zimmerman Exhibit C—Larson's sketch of early wrench.

C. The wrenches which were offered in evidence in Interference No. 77,565 as Larson Exhibits Nos. 31, the wrench purchased by Ladendorf on June 20, 1938, and 37, the wrench allegedly sold by Dawson to Blake in December, 1937, be marked and received in evidence in this action as Defendants' Exhibits 104 and 105, respectively.

D. Defendants' Exhibits 2, 7, 8, 9, 10, 61, 104, 105 and 106 and Plaintiff's Exhibit 4 comprise a portion of the deposition of testimony (the testimony of certain witnesses and portions of testimony of other witnesses 1676 not having been transcribed) and all the documentary and physical exhibits taken and introduced during the taking of proofs by the party Larson in Interference No. 77,565.

2.

The letter of Automotive Maintenance Machinery Company of February 3, 1941, addressed to Mr. Fidler and referred to in the transcript at page 629 as Defendants' Exhibit 79, may be renumbered as Defendants' Exhibit 60 and the transcript may be corrected accordingly.

3.

A certified copy of the Larson patent application Serial No. 232,723, as filed on October 1, 1938, and which issued as United States Letters Patent No. 2,279,792, be marked and received in evidence as part of the record in this action as Plaintiff's Exhibit 64.

4.

Soft printed copies of the patents in suit, namely, Larson No. 2,279,792, Zimmerman No. 2,283,888, and Zimmerman Re. 22,219, be marked as part of the record in this action as Plaintiff's Exhibits 65, 66 and 67, respectively.

5.

This stipulation may be marked and received in evidence as Plaintiff's Exhibit 68.

Davis.—Lindsey, Smith & Shonts,
Counsel for Plaintiff.

June 21, 1943.

1677

Casper W. Goms,
Counsel for Defendants—Precision Instrument Manufacturing Company and Kenneth R. Larson.

June 21, 1943.

Will Freeman,
Counsel for Defendant—Snap-On Tools Corporation.

June 25, 1943.

1679

DEFENDANTS' EXHIBIT NO. 4.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement, entered into as of the 20th day of December, 1940, by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), Precision Instrument Manufacturing Company, of Des Plaines, Illinois, an Illinois corporation (hereinafter referred to as Precision), and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),—

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Larson is the applicant named in application for Letters Patent, Serial No. 232,723, filed October 2, 1938, for Torque Wrench;

Witnesseth, an interference, No. 77,565, between said Lar-

son application, Serial No. 232,723, and said Zimmerman applications is now pending in the United States Patent Office;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with Snap On Tools Corporation, of Kenosha, Wisconsin, respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723, which contract, as represented by Larson and Precision, is owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to said Snap On Tools Corporation for resale to the trade;

Whereas, said Larson application, Serial No. 232,723, has, prior to the date hereof, been owned by said Snap On Tools Corporation, and said Snap On Tools Corporation has reassigned said Larson application to said Larson and Precision;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference, as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by concession of priority from Larson to said Herman W. Zimmerman, in order that said interference may be terminated amicably and without further contestation and expense; and

Whereas, Larson is now President of Precision, and Precision and Larson, jointly and severally, are desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

1681 Now, Therefore, in consideration of Five Hundred Dollars (\$500.00), in hand paid to AMMCO, receipt of which is hereby acknowledged, and further in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Larson shall and hereby does concede priority of invention to said Herman W. Zimmerman with respect to

the subject matter involved in said Interference No. 77,565 and all other subject matter commonly disclosed in said Zimmerman and Larson applications, and Precision, in so far as it may have any rights with respect to said Larson application, consents to said concession of priority.

2. Larson and Precision, jointly and severally, shall and hereby do assign their entire right, title and interest in and to said Larson application, Serial No. 232,723, to AMMCO.

3. Precision agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and/or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders from said Snap-On Tools Corporation as of the date of this agreement. Said statement shall give the dates of the orders, the numbers ~~and~~ of the wrenches covered by the orders, and the number of wrenches of ~~each size~~ which still remain to be delivered to fulfill the respective orders, and Precision warrants and covenants as one of the main considerations for the release specified in paragraph 6 hereof that the statement is complete and accurate and that Precision has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than said Snap-On Tools Corporation, and Precision and Larson, jointly and severally, further warrant and covenant that the total number of said wrenches to be delivered on said unfilled orders does not exceed six thousand (6000) and that in the event, due to error or for any reason, said total number exceeds said six thousand (6000), then Larson and/or Precision will pay, or they will take such legal steps as are necessary to cause said Snap-On Tools Corporation to pay, to AMMCO ten per cent (10%) of said Snap-On Tools Corporation's net selling price of the wrenches in excess of six thousand (6000). Said royalties are to be paid each month for the excess wrenches shipped during the next preceding month. Precision further agrees that it will not, after the date hereof, take any further orders from said Snap-On Tools Corporation, or any other party,

for torque wrenches of the kind hereinabove identified and that, as soon as said torque wrenches now on order are completed, it will discontinue the manufacture and/or sale and or use of said wrenches, and Precision further agrees that it will not thereafter, directly or indirectly, in 1683 fringe any of the claims (now or hereafter allowed) of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders on hand at the time of signing this agreement have been filled. Larson agrees to and shall be bound equally with Precision as to all of the provisions of this paragraph.

4. Precision and Larson each agree not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

5. Precision and Larson, jointly and severally, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which they, or either of them, may now have or at any time claim to have in, to and under said Larson application, Serial No. 232,723, by virtue of said agreement dated September 28, 1938.

6. AMMCO, in consideration of the performance of all the foregoing by Precision and Larson, and each of them, does hereby release and forever discharge Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against them, or either of them, prior to the 1684 date hereof, on account of said Interference No. 77,

565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to said Snap-On Tools Corporation.

In Witness Whereof, the parties hereto have caused this agreement to be signed in triplicate, Larson subscribing in proper person, and AMMCO and Precision by their

officers, respectively, thereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Automotive Maintenance Machinery
Co. (AMMCO).

By Frederick G. Wacker,
President.

Attest:

M. J. Stacey,
Secretary.

Precision Instrument Manufacturing
Company (Precision).

By Kenneth R. Larson,
President.

Attest:

Walter Carlsen,
Secretary.

Kenneth R. Larson. (Seal)
Kenneth R. Larson.

State of Illinois } ss.
County of Cook }

On this 23 day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that 1685 he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Dorothy P. Smead,
Notary Public.

My commission expires Feb., 1942.

State of Illinois } ss.
County of Cook }

On this 24 day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing

Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

M. K. Hobbs,
Notary Public.

State of Illinois }
County of Cook } ss.

On this 24 day of December, 1940; personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

M. K. Hobbs,
Notary Public.

1686

DEFENDANTS' EXHIBIT NO. 5.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement, entered into as of the 20th day of December, 1940, by and between Automotive Maintenance Machinery Co. of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), and Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Delaware, (hereinafter referred to as Snap-On),—

Witnesseth:

Whereas, Snap-On warrants that it is the owner of an application for Letters Patent, Serial No. 232,723, filed October 1, 1938, in the name of one Kenneth R. Larson of Des Plaines, Illinois, for Torque Wrench;

Whereas, said Larson application, Serial No. 232,723, is involved in an interference, No. 77,565, now pending in the United States Patent Office with the following patent applications of Herman W. Zimmerman which AMMCO warrants that it owns: Serial No. 475,863, filed November

22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by a 1687 cession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense;

Whereas, Snap-On did, on September 28, 1938, enter into a certain agreement with said Kenneth R. Larson respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723, which ~~contract~~ is now owned by Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois, as represented by said Kenneth R. Larson and said Precision Instrument Manufacturing Company, and said Precision Instrument Manufacturing Company now is and for some time has been manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade; and

Whereas, Snap-On is desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does reassign its entire right, title and interest in and to said Larson application, Serial No. 232,723, to said Kenneth R. Larson and said Precision Instrument Manufacturing Company.

1688 2. Snap-On agrees that it will, at the time of signing this agreement, give to AMMCO a written statement setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other

torque wrenches coming within the scope of any of the claims (now allowed) in said Zimmerman and Larson applications, or either of them, called for in unfilled orders on hand and given to said Precision Instrument Manufacturing Company or otherwise as of December 20, 1940. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders, and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders. Snap-On warrants and covenants as one of the main considerations for the release specified in paragraph 5 hereof that the statement is complete and accurate and that Snap-On has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than as specified in the statement, and Snap-On further warrants and covenants that the total number of said wrenches to be delivered on said unfilled orders does not exceed six thousand (6000) and that in the event, due to error or for any reason, said total number exceeds said six thousand (6000), then Snap-On and/or Precision will pay to Ammco ten per cent (10%) of Snap-On's net selling price of the wrenches in excess of six thousand (6000). Snap-On in any event guaranteeing payment of said royalties to Ammco. Said royalties are to be paid each month for the excess wrenches shipped during the next preceeding month. Snap-On further agrees that, as of the date of this agreement, it will not give to said Precision Instrument Manufacturing Company, or to any other party, excepting AMMCO, any order or orders for said torque wrenches of the kind hereinabove identified, and that, as soon as said wrenches on order as of the date of this agreement have been delivered to it and disposed of in fulfillment of said orders, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims (now or hereafter allowed) in said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders given by it have been filled and when the wrenches supplied on said orders have been fully disposed of by Snap-On.

3. Snap-On agrees not to directly or indirectly, contest the validity of any claim or claims of any Letters Patent

that may issue upon said Zimmerman and Larson applications.

4. Snap-On shall, and hereby does, assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which it may now or at any time claim to have in, to and under said Larson application Serial No. 232,723 by virtue of said agreement dated September 26, 1936.

5. AMMCO, in consideration of the performance of all the foregoing by Snap-On, does hereby release and forever discharge Snap-On and all of its customers from any 1690 and all liability arising out of any claim or claims of any name or nature which AMMCO may have against it, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, respectively, thereunto duly authorized and their corporate seals affixed this 23rd day of December, 1940.

Automotive Maintenance Machinery Co.
(AMMCO)

By Frederick G. Wacker,

President.

Attest:

M. J. Stacey,

Secretary.

Snap-On Tools Corporation (Snap-On)

By J. Johnson,

President.

Attest:

Wm. A. Seidemann,

Secretary.

State of Illinois, }
County of Cook. } ss.

On this 23 day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he 1691 is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Dorothy P. Smith,

(Seal)

Notary Public

My commission expires Feb. 1942.

State of Wisconsin }
County of Kenosha } ss.

On this 26 day of December, 1940, personally appeared before me J. Johnson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Delaware and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Margaret Riordan,

(Seal)

Notary Public

1693

DEFENDANTS' EXHIBIT NO. 11.

(Letterhead of Automotive Maintenance Machinery Co.—
North Chicago, Ill.)

November 5, 1940

Davis, Lindsey, Smith & Skonts,
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

As you requested I submit a report of my recent conversations with Mr. M. C. Travis, our former superintendent, and of my meeting with him on November 1 and our meeting on the evening of November 3 at your residence, at which meeting were present you, Mr. M. C. Travis, Mr. George Thomasma, Mr. David M. Krichiver, Mr. Thomasma's attorney, and me, as follows:

During the weekend prior to November 1 or thereabouts Mr. Travis telephoned me at my residence in Lake Forest stating that he wanted to see me the next time I was in Chicago on a matter that was of interest and importance to me. I replied that I expected to be in the city the latter part of the coming week and that I would phone him later as to a definite date. I telephoned him on Thursday October 31 and arranged to meet him at the Edgewater Beach Hotel at 5:30 P. M. on Friday November 1. I told him to meet me at the entrance as the traffic would be heavy at that time of night and I probably would not be able to find a place to park. Travis met me as arranged and we drove approximately a half dozen blocks north and west and stopped at a tavern adjacent to the L.

Travis said that he had come to me at the suggestion of George Thomasma who had been at his home when he first called me and who had come to him for advice with respect to the pending Larson-Zimmerman Patent Interference situation. Travis stated that he knew both of us and would do everything he could to bring us together to straighten out any differences that existed between us in the above situation. Travis told me that Thomasma had said to him that he (Thomasma) had developed the wrench that was being manufactured in De Plaines by the Pre-

recision Instrument Mfg. Co. and that he had received stock in the Precision Instrument Mfg. Co. for turning in this development to them. Travis said that Thomasma also stated to him that Snap-On Tools, Inc. was back of 1694 Precision Instrument Mfg. Co.'s activities and was financing this patent litigation. He further stated that Thomasma had told him that either Larson or Carlson of the Precision Instrument Mfg. Co. was going under an assumed name. Travis said that Thomasma wanted to do the right thing and testify as to the facts but that in doing so Thomasma would destroy the value of the stock that he owned in the Precision Instrument Mfg. Co. I told Travis very definitely that our only interest was to protect our own rights and that we had no desire to proceed against Thomasma in any way unless forced to do so should Thomasma get on the stand and perjure himself. I also told Travis very emphatically that we could not legitimately and therefore would not offer any inducement whatever to Thomasma that might influence his testimony in any way, first because it was unethical, and second because if discovered it would make his testimony valueless; and further than that would seriously jeopardize our case. I further told Travis that a discussion with respect to the purchase of Thomasma's stock could not be regarded as a normal business transaction under normal conditions because it would clearly be intended for the purpose of influencing testimony and would be so construed if discovered, and that, for that reason, we could not make any promises or hold out any inducements to Thomasma that might influence his testimony in our favor either for the present or for the future.

Travis then said that he would report back to Thomasma and that he thought it would be desirable that he (Travis), Thomasma and I have a meeting and talk things over. I replied that I would discuss the matter with you, our attorney, and that I would not consider meeting Thomasma under any circumstances unless you were present.

On November 2 I telephoned you of this conversation; and on the same day I telephoned Travis and suggested that a meeting be arranged with Thomasma for Tuesday November 5 or Wednesday November 6, whatever date was acceptable to you. I suggested that the meeting be held in your office. Travis later called me back and said

that Thomasma would prefer an earlier date, either Saturday November 2 or Sunday November 3. After various telephone conversations it was finally arranged that you and I would meet Thomasma and Travis at your residence at 9532 Lawndale, Niles Center, at 8:00 o'clock P. M. on Sunday November 3.

As you know, I arrived at your residence at 8:00 o'clock. A little later Thomasma arrived with his attorney Mr. Krichiver, and about 8:30 o'clock Travis arrived. You will recall the conversation that took place.

Travis started out by saying that he wanted to see Thomasma and me get together because he felt friendly toward both of us. Mr. Krichiver and Thomasma stated that Larson's patent application was a frame-up and that the Snap-On Tools, Inc. was back of the whole thing, that Thomasma had developed the wrench and that he had turned the wrench in to Precision Instrument Mfg. Co. in consideration for which he received stock in the Precision Instrument Mfg. Co. Thomasma made the statement that Mr. Carlson of the Precision Instrument Mfg. Co. was going under an assumed name. He also stated that he had developed this tool in his basement and that Larson saw it there for the first time. You and I both stated definitely that we knew the facts in the case and stated them as we knew them to be. Thomasma, Krichiver and Travis did not argue the facts as we stated them but on the contrary acquiesced and agreed.

Mr. Krichiver then explained that if Thomasma got up on the witness stand and testified in accordance with the facts that he would thereby destroy the value of his stock in the Precision Instrument Mfg. Co. and that he therefore thought that we should arrange to purchase Thomasma's stock at a price to be agreed upon. You and I both flatly refused to consider any such proposition and we flatly refused to offer any inducements to Thomasma either for the present or for the future that might in the slightest degree tend to influence Thomasma's testimony, first because it was unethical and second because it would render Thomasma's testimony valueless should such an arrangement be discovered and would further damage our own case irreparably in that event. I then stated that I would unquestionably be cross examined on the witness stand and would unquestionably be asked the direct ques-

tion as to whether or not we had in any way done anything to influence Thomasma's testimony by offering any inducements or making any promises to Thomasma either for the present or for the future and that I would under no circumstances place myself in the position of either making damaging admissions or perjuring myself to avoid making them.

You then stated emphatically and vehemently that your firm of Davis, Lindsey, Smith & Shonts was an ethical and honorable firm and that if you became a party to any such arrangement that your partners would kick you out of the firm.

You and I both explained to them that this was not a situation involving normal negotiations for the purchase of stock under normal conditions because the purchase of Thomasma's stock could only be construed as a financial consideration to influence the testimony of Thomasma in our favor; and we explained in detail over and over again why we could not and would not even consider discussing the purchase of Thomasma's stock in the Precision Instrument Mfg. Co.

Shortly thereafter Mr. Krichiver said that he was late for an appointment and he and Thomasma left together.

As you remember Travis and I remained and continued the discussion for half to three-quarters of an hour. Travis said that Mrs. Thomasma was at his home with Mrs. Travis waiting for Thomasma and that he would probably see him later. Travis said that he felt Thomasma wanted to do the right thing and that he (Travis) would advise him to do so. Travis then left your house and I left shortly afterwards, somewhere around 11:00 o'clock P. M.

I then drove home to Lake Forest and as I remember it some time between 1:00 o'clock and 2:00 o'clock A. M. on the morning of November 4 (the same night) Travis called me on the telephone and told me that he had had a talk with Thomasma who had waited for him at Travis' home; and that Thomasma had assured him that if called upon he would get on the witness stand and testify accurately and honestly as to the facts in this case.

I telephoned you to this effect at your office the following morning.

I believe I have briefly but completely summarized the subjects discussed; but would appreciate hearing from

you if according to your recollection I have omitted anything of importance.

With kindest personal regards,

Very truly yours,

Automotive Maintenance Machinery Co.

By Fred G. Wacker

Fred G. Wacker

fgw/ms

Pres.

1699

DEFENDANTS' EXHIBIT NO. 13.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

August 12, 1940.

Larson employed by Auto Parts Machine Company of Des Plaines (now Auto Parts Company of Des Plaines), 1586 Minor Street, from 1928 to June 1, 1936. From 1933 to 1936 his position was that of manager.

In June, 1936, Larson and Jack E. Kamppinen started the K and L Motor Rebuilders at 624 and continued until 1938, at which time Precision was started. In 1936 Larson lived at 1455 Campbell Avenue (Des Plaines, I presume), and when he started Precision he left and still lives at 1206 Center Street.

Kamppinen now lives at 5606 West Leland Avenue, Chicago.

Walter Carlson is the principal source of money behind Precision. He is not active in the factory. He operates a beauty parlor with his wife at 660 Pearson Street.

Eight or more prominent businessmen of Des Plaines have capital invested in Precision Instrument Company.

1700

September 3, 1940.

When Precision was started Larson and Carlson looked for others to invest in the company and they sold stock to a Dr. Purves and a Gus Staellmack (or Stellmack), president of the Northwest Beverage Company. Staellmack and Purves own 400 shares. Carlson, Larson and Thomasa own 600 shares.

Staellmack told Ed. Schulz that Larson and Thomasa were on the outs with each other because Thomasa had invented the wrench and Larson was now trying to freeze

him out. Thomasa has a key to the Precision plant and goes there occasionally in the evenings, but he does not work there anymore. At the time Precision started making tools they had a contract with Snap-On to sell the entire output to Snap-On. The patent application was assigned to Snap-On so that Snap-On would pay the expenses of obtaining the patent, Precision setting aside a fund on each tool to cover royalty costs if they do not secure the patent. The Precision tool is made entirely at the Precision factory, except the casting. Precision buys its steel from Allegheny-Ludlam Steel Company at 47th and Kedzie Avenue, Chicago. They get the brass dial from the Witzi Company. They are attaching a light to some of the tools but they are on special orders.

They made a few tools with a ratchet but they weren't so successful.

1701

September 9, 1940.

Besides Larson, Carlson and Thomasa, there are seven stockholders, namely, Dr. S. Purves, Gus Stellmack, Mrs. Ryan, Pat Maloney, Lee Barcroft and a Mr. Kappizloa. Stellmack says that Precision, on July 31, 1940, held a stockholders' meeting and, in this meeting, Thomasa, who was present, was the cause of strife. Larson and Carlson wanted to get rid of him as a director but they couldn't do so because of the backing which the small stockholders gave him. The stockholders insisted that Larson make a place for Thomasa in the organization but Larson and Carlson said no because that might have some bearing regarding the patent application since Thomasa was formerly employed by Ameco. The stockholders finally decided that Larson and Carlson were right, and Thomasa is no longer working for Precision.

The contract with Snap-On is for an indefinite length of time and is dependent upon how well Snap-On keep up with their part of the distribution. Stellmack said that Thomasa did his experimental work in a factory in Woodstock operated by a Walter Dutton. Thomasa's purpose being to keep his activities away from everyone.

Thomasa started to work for Automotive in 1923. He made suggestions at various times with respect to tools to be made by Ameco, but each time he was given reasons why they were not practical, with the result that nothing was done with them. Someone usually came

1702

out, though, in a short time with the same thing. After this had happened several times he decided to keep his ideas to himself, and two or three years ago he had an idea about a pressure wrench and decided to use his basement to develop the idea. Automotive was working on a similar wrench at the time but his idea was way ahead of theirs. About that time, Larson, who was his friend then, was having difficulties and his auto supply business was nearly on the rocks. He was looking around for something to do. He happened to go to Thomasa's house one night and he asked Thomasa what he was doing. Thomasa showed him the wrench and Larson asked him if they couldn't work it out together. They decided to do so. That was about two years ago, or in the fall of 1938. Then came the problem of distribution. Larson didn't have any money. He wanted Thomasa to put up the money. Thomasa suggested a corporation. Larson was against it because then he would have to keep books that people would look at. After trying two or three distribution ideas, they got an audience with Snap-On through Carlson, who had a relative there. Snap-On agreed to distribute if they could have exclusive rights. Precision agreed to give them exclusive rights and the contract was drawn up. Then came the problem of getting money to manufacture. That is when they contacted Carlson, and Carlson and Thomasa sold Larson on the corporation idea by selling capital stock to get enough money to start the business. Larson and Carlson then got "chummy" and, for some reason or another, turned against Thomasa, doing everything possible to get rid of him.

1784

September 17, 1940.

A Mrs. Ryan owns 35 shares of stock in Precision. Until recently she owned 40 shares but was induced by Thomasa to sell five shares to David M. Krichiver, 139 South Clark Street. Thomasa told Mrs. Ryan that he was being crowded by Larson and Carlson for control of the company and, by getting Krichiver into the company, he would have legal aid in the company.

Mr. and Mrs. Thomasa both told Mrs. Ryan that the Precision wrench was originated in the basement of the Thomasa home at 1401 Potter Road, Park Ridge, Illinois, and that it was invented by Thomasa.

1705

September 30, 1940.

Larson formerly employed by Auto Parts Machine Company of Des Plaines for about eight years, or until about June 1, 1936.

Walter Wittson was manager and owner of that company.

Wittson never heard of the Precision wrench until 1938, or more than two years after Larson left the Auto Parts Company.

Bradley and Fritz Anderson were fellow employees of Larson's at the Auto Parts Company and they never heard of the wrench either.

Larson transferred from the Des Plaines shop to the Evanston shop about the middle of May, 1936. He was transferred because of his overbearing nature. After coming there, he induced Jack P. Kamppenin, another employee of the same company, to start a competitive concern in Des Plaines known as the K and L Motor Rebuilders.

In November, 1939, he sold his interest to a Mr. Wolf.

Although Kamppenin was Larson's partner he knew nothing of the Precision wrench until late in 1938 when Larson and Thomasa started working on the wrench during the evenings in Larson's or Thomasa's basement.

Kamppenin had little to do with the wrench but knows that Larson and Thomasa did not start any work on it until 1938, and he feels that it was because of Larson's work on the wrench that the K and L Motor Rebuilders nearly went broke.

Kamppenin and Larson are not friendly now.

1706 Although Larson and Kamppenin were very close friends while working for Auto Parts Company in Des Plaines, and even though they pooled their resources and brains and ability in an attempt to make outside money, Larson never once mentioned the wrench to Kamppenin prior to 1938.

Larson and Kamppenin needed something very badly to manufacture and to help them get back in condition to make some money but, notwithstanding all this, Larson never mentioned anything about the wrench. Naturally, if he had known of the wrench at that time he would have brought it forward as an answer to their problem.

1707 One George B. Thomasa, or Thomasma, was for many years employed by Automotive Maintenance

Machinery Co., of North Chicago, Illinois (formerly of Chicago). He worked for Automotive for several years, up until the Spring of 1939, when he was discharged. During the time that he was with Automotive, Automotive was engaged in extensive development work with respect to torque measuring wrenches and, as a result of such developments, a wrench of the type shown by the attached circular was manufactured and sold on a production basis. One of Automotive's customers was the Snap-On Tools Corporation of Kenosha, Wisconsin.

In supplying such tools to Snap-On, service problems arose and, at times, Thomasa was sent to Kenosha to take care of the service work.

On or about December 6, 1938, and while Thomasa was still working for Automotive, the Precision Instrument Manufacturing Company, of 1206 Center Street, Des Plaines, Illinois, was incorporated. The incorporators were Kenneth R. Larson, George B. Thomasa, and Walter Carlsen (or Carlson). This company was incorporated for the purpose of manufacturing and selling tension or torque measuring wrenches under a certain pending U. S. patent application Serial No. 232,723.

According to a commercial report, the company manufactures a wrench of the above type and it sells its entire output to a Kenosha, Wisconsin concern, which apparently is Snap-On. According to the financial report, the 1708 company was located in September, 1939 at 1846 Miner Street, Des Plaines, Illinois.

Thomasa, as has been noted, was one of the incorporators of the Precision Company while he was still employed by Automotive, and this was true even though the main purpose of incorporating this company was to manufacture a torque measuring wrench. It is also significant that the wrench that the company was incorporated to make is substantially the same as the wrench that Automotive was making while Thomasa was employed there and which Automotive was making at the time the Precision Company was organized.

It is also significant that the application referred to in the incorporation papers was filed October 1, 1938, or shortly before the incorporation of the Precision Company; and that the United States Patent Office has caused the institution of a proceeding to determine whether Larson or Automotive's inventor (Zimmerman) is the prior,

inventor of this form of wrench. In that proceeding in the Patent Office, the parties are required to state their dates of invention. The dates alleged by Larson are approximately three years earlier than the dates alleged by Zimmerman.

The attorney representing the Precision Company and Larson in the Patent Office proceeding is Mr. Harry C.

Alberts, 38 South Dearborn Street, Chicago, Illinois, 1709. It is significant that the Larson application was assigned to the Snap-On Tools Corporation, above referred to, on October 1, 1938, prior to the incorporation of the Precision Company.

It may be that the Snap-On Tools Corporation has granted a license to Precision.

There is some information to the effect that Thomasa and Larson have both lived in Des Plaines for some time and that they have been friendly and worked together for quite some times in connection with various matters. In fact, it is believed that Thomasa made it a practice to take tools from Automotive's plant and do work with the same in company with Larson at Des Plaines. There is no positive confirmation of this but there is every reason to believe that they were together very frequently through all the time that Automotive was developing its torque wrench.

Thomasa had every chance of gaining full and complete information respecting Automotive's developments because he was directly engaged therein; and, having that knowledge, he was in position to convey it to Larson.

Larson is claiming that he conceived his wrench idea about July 15, 1934 in connection with the making of a pattern for a wrench; that a wrench was built and tested in September, 1934, more than four years before he filed his application. The construction of this wrench in 1934 is not known, but it may have been quite different from the wrench of his application. Also, it may be that the

wrench of 1934 was not successful and that it was dropped or abandoned and was not revived until after Automotive's activity later on in 1937. The facts in this respect will, of course, determine the question. Larson may also have a question of diligence confronting him. It may be necessary for him to show that he was actively engaged in work upon this type of wrench back in the early part of 1937 and thereafter until the latter

part of 1937: In other words, the facts surrounding his work from about July, 1934 until October, 1938 are important.

Upon inquiry in November, 1939, Larson informed a party over the telephone that Thomasa was then in the employ of Precision and that he had been in Precision's employ since December, 1938.

1711

DEFENDANTS' EXHIBIT NO. 14.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

AGREEMENT.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO); Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois (hereinafter referred to as Precision); Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Wisconsin (hereinafter referred to as Snap-On); and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),—

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 240,860, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Snap-On is the owner of the following patent applications filed in the name of Larson: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. _____, filed _____, for Torque Wrench;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with Snap-On respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson applications, 1712 which contract is now owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade;

Whereas, an interference, No. 77,565, between said Lar-

son application No. 232,723 and said Zimmerman applications; is now pending in the United States Patent Office;

Whereas, it has been determined by the parties hereto and their respective counsel that the party Zimmerman is the prior inventor of the subject matter involved in said Interference No. 77,565, as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications; and

Whereas, all parties hereto are desirous of settling the said interference amicably and without further needless contestation and expense;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Larson shall and hereby does concede priority of invention to Zimmerman with respect to the subject matter involved in said Interference No. 77,565 and all other subjects matter commonly disclosed in said Zimmerman and Larson applications.

2. Snap-On shall and hereby does assign its entire right, title and interest in and to said Larson applications, Serial No. 232,723 and Serial No. 1713 to AMMCO.

3. Precision agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of wrenches of design similar to the wrenches disclosed in said Larson applications on order from Snap-On or any other party at the time of signing this agreement. Precision further agrees that it will not, after the signing of this agreement, take any further orders from Snap-On or any other party for said torque wrenches or any other torque wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and that, as soon as said wrenches now on order are completed, it will discontinue the manufacture and/or sale and/or use of said wrenches, and it agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson and Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders for said wrenches have been filled.

4. Snap-On agrees that it will, at the time of signing this agreement give to AMMCO a written statement (un-

der oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, call for unfilled orders given to Precision, or any other party, as of that time. Snap-On further agrees that, after the signing of this agreement, it will not give to Precision or any other party any order or 1714 orders for said wrenches, or any other wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and that, as soon as said wrenches on order at the time of signing this agreement have been delivered to it, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson and Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders have been filled by Precision and when said wrenches still to be delivered to Snap-On by Precision have been fully disposed of by Snap-On.

5. Snap-On, Precision and Larson each agree not to directly or indirectly contest the validity of any claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

6. Snap-On and Precision, each on its own behalf, hereby assign, transfer, convey and quitclaim unto AMMCO all rights of every name or nature which they or either of them may now or at any time claim to have in, to and under said Larson applications, or either of them, by virtue of said agreement of September 28, 1938, or any other agreement dealing with said torque wrenches and which may have been entered into between Precision, Larson and/or Snap-On.

1715. 7. Snap-On and/or Precision agrees to turn over to AMMCO upon execution of this agreement such monies as remain in a certain "defense fund" (built up by agreement or understanding between Snap-On, Precision and/or Larson) after deducting from such fund all necessary and legitimate expenses which have heretofore properly accrued as against said fund.

8. AMMCO, in consideration of the performance of all the foregoing by Snap-On, Precision and Larson, and each of them, does hereby release and forever discharge Snap-

On and Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO has or may have had against them, jointly and severally, prior to the date hereof, on account of said Interference No. 77,565 and also on account of development of, dealing in, manufacture, use and or sale of torque measuring wrenches coming within the scope of any of the claims of said Larson and Zimmerman applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in Paragraphs 3 and 4 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

1716 In Witness Whereof, the parties hereto have, this day of _____, 1940, caused this agreement to be signed in quadruplicate, Larson subscribing in proper person and AMMCO, Snap-On and Precision by their officers, respectively, duly authorized in the premises.

Automotive Maintenance Machinery Co.

By

President

Attest:

Secretary

Precision Instrument Manufacturing Company

By

President

Attest

Secretary

Snap-On Tools Corporation

By

President

Attest:

Secretary

Kenneth R. Larson

1717. State of Illinois
County of _____

} ss.

On this _____ day of _____, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery, Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois
County of _____

} ss.

On this _____ day of _____, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of _____
County of _____

} ss.

On this _____ day of _____, 1940, personally appeared before me _____, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and

voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

1718 State of Illinois } ss.
County of

On this day of 1940, personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

Notary Public.

1719 DEFENDANTS' EXHIBIT NO. 15.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), and Snap-On Tools Corporation, of Kenosha, Wisconsin, a corporation of Wisconsin (hereinafter referred to as Snap-On).—

Witnesseth:

Whereas, Snap-On warrants that it is the owner of the following patent applications filed in the name of one Kenneth R. Larson of Des Plaines, Illinois: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. filed for Torque Wrench;

Whereas, said Larson application, Serial No. 232,723, is involved in an interference, No. 77,565, now pending in the United States Patent Office with the following patent applications of Herman W. Zimmerman which AMMCO warrants that it owns: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench; and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, with respect to said interference, it has been

determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference as well as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties hereto are desirous of settling said interference by a 1720 concession of priority from said Kenneth R. Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense;

Whereas, Snap-On did, on September 28, 1938, enter into a certain agreement with said Kenneth R. Larson respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in said Larson application, Serial No. 232,723, which contract is now owned by Precision Instrument Manufacturing Company, of Des Plaines, Illinois, a corporation of Illinois, as represented by said Kenneth R. Larson and said Precision Instrument Manufacturing Company, and said Precision Instrument Manufacturing Company now is and for some time has been manufacturing said torque wrenches and selling its entire output of the same to Snap-On for resale to the trade; and

Whereas, Snap-On is desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1. Snap-On shall and hereby does assign its entire right, title and interest in and to said Larson applications, Serial No. 232,723 and Serial No. _____, to AMMCO.
- 1721 2. Snap-On agrees that it will, at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders given to said Precision

Instrument Manufacturing Company as of that time. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders, and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders, and Snap-On warrants and covenants as one of the main considerations for the release specified in paragraph 7 hereof that the statement is complete and accurate and that Snap-On has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than as specified in the statement. Snap-On further agrees that, after the signing of this agreement, it will not give to said Precision Instrument Manufacturing Company, or to any other party, excepting AMMCO, any order or orders for said torque wrenches of the kind hereinabove identified; and that, as soon as said wrenches on order at the time of signing this agreement have been delivered to it and disposed of in fulfillment of said orders, Snap-On will thereafter discontinue the sale, distribution and use of said wrenches, and Snap-On agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, or any patent that may issue thereon. Snap-On further agrees that it will notify AMMCO promptly in writing when said orders given by it have been filled and when the wrenches supplied on said orders have been fully disposed of by Snap-On.

3. Snap-On agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

4. Snap-On shall, and hereby does, assign, transfer, convey and quitclaim unto AMMCO all rights of every name, or nature which it may now or at any time claim to have in, to and under said Larson applications, or either of them, subject only to the provisions of paragraph 6 hereof.

5. Snap-On agrees to turn over to AMMCO, upon execution of this agreement, such monies as remain in a certain "defence fund" (built up by agreement or understanding between Snap-On, said Precision Instrument Manufacturing Company and or Kenneth R. Larson) after deducting from such "fund" all necessary and legitimate expenses which have heretofore properly accrued as against said

"fund", it being mutually understood and agreed that, if at anytime within two years after the signing of this agreement, any additional expenses of a nature that would be legitimately deductible from said "fund", if it then existed, shall accrue against Snap-On on account of any claim made by any party other than said Precision Instrument Manufacturing Company and or Kenneth R. 1723 Larson and be legally determined against, AMMCO shall reimburse Snap-On for said additional expenses, but in no event shall AMMCO reimburse Snap-On in an amount exceeding the amount of said "fund" turned over to AMMCO hereunder. Snap-On agrees that, if any claim is made against it hereafter that might incur any said additional expense, it will promptly give AMMCO written notice of the same, and AMMCO shall have the right to be represented by counsel in all negotiations or proceedings of any kind that may involve any said claim and additional expense.

6. AMMCO shall, and hereby does, grant to Snap-On a fully paid, non-divisible and non-exclusive license to manufacture, use and sell the gauge mechanism of said Larson application, Serial No. _____, it being distinctly understood that this license is limited to said gauge mechanism and that no rights are hereby given with respect to the manufacture, use and or sale of any form of wrench with which said gauge mechanism may be employed, and that this license is not transferable by Snap-On except in connection with and as a part of the sale of the entire torque wrench business (and good will thereof) of Snap-On.

7. AMMCO, in consideration of the performance of all the foregoing by Snap-On, does hereby release and forever discharge Snap-On and all of its customers from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against it, prior to the date hereof, on account of said Interference No. 1724 77,565 and also on account of development of, dealing in and or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to Snap-On or disposed of by Snap-On.

In Witness Whereof, the parties hereto have caused this agreement to be signed in duplicate by their officers, re-

Specifically, therewith duly authorized and their corporate seals affixed this _____ day of December, 1940.

Automotive Maintenance Machinery Co.
(Ammeo),

By _____

Attest:

President.

Secretary.

Snap-On Tools Corporation (Snap-On),

By _____

Attest:

President.

Secretary.

State of Illinois
County of _____

} ss.

On this _____ day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said 1725 corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois
County of _____

} ss.

On this _____ day of December, 1940, personally appeared before me _____, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Snap-On Tools Corporation, a corporation of Wisconsin, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

1726

DEFENDANTS' EXHIBIT NO. 16.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Agreement.

This agreement by and between Automotive Maintenance Machinery Co., of North Chicago, Illinois, a corporation of Illinois (hereinafter referred to as AMMCO), Precision Instrument Manufacturing Company, of Des Plaines, Illinois, an Illinois corporation (hereinafter referred to as Precision) and Kenneth R. Larson, of Des Plaines, Illinois (hereinafter referred to as Larson),—

Witnesseth:

Whereas, AMMCO is the owner of the following patent applications filed in the name of Herman W. Zimmerman: Serial No. 175,863, filed November 22, 1937, for Torque Measuring Wrench, and Serial No. 210,869, filed May 31, 1938, for Torque Measuring Wrench;

Whereas, Larson is the applicant named in the following patent applications owned by Snap-On Tools Corporation, of Kenosha, Wisconsin: Serial No. 232,723, filed October 1, 1938, for Torque Wrench, and Serial No. _____, filed _____, for Torque Wrench;

Whereas, an interference, No. 77,565, between said Larson application, Serial No. 232,723, and said Zimmerman applications is now pending in the United States Patent Office;

Whereas, Larson, on September 28, 1938, entered into a certain agreement with said Snap-On Tools Corporation respecting the manufacture and sale of torque wrenches similar in design to the torque wrench disclosed in 1727 said Larson application, Serial No. 232,723, which contract, as represented by Larson and Precision, is now owned by Precision, and Precision now is, and for some time has been, manufacturing said torque wrenches and selling its entire output of the same to said Snap-On Tools Corporation for resale to the trade;

Whereas, with respect to said interference, it has been determined by the parties hereto and their counsel, respectively, that the party Zimmerman is the prior inventor of the subject matter involved in said interference, as well

as all other subject matter commonly disclosed in said Zimmerman and Larson applications, and the parties here to are desirous of settling said interference by concession of priority from Larson to said Herman W. Zimmerman in order that said interference may be terminated amicably and without further contestation and expense; and

Whereas, Larson is now President of Precision, and Precision and Larson, jointly and severally, are desirous of discontinuing the manufacture, use and sale of torque wrenches coming within the scope of any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, under the conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and the covenants and agreements of the parties, well and truly to be kept and performed, the parties hereto agree as follows:

1728 1. Larson shall and hereby does concede priority of invention to said Herman W. Zimmerman with respect to the subject matter involved in said Interference No. 77,000 and all other subject matter commonly disclosed in said Zimmerman and Larson applications, and Precision, in so far as it may have any rights with respect to said Larson applications, consents to said concession of priority.

2. Precision agrees that it will at the time of signing this agreement, give to AMMCO a written statement (under oath if AMMCO so requests) setting forth the number of torque wrenches of design similar to the wrenches disclosed in said Larson and Zimmerman applications, or either of them, and or any other torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, called for in unfilled orders from said Snap-On Tools Corporation as of that time. Said statement shall give the dates of the orders, the numbers and sizes of the wrenches covered by the orders; and the number of wrenches of each size which still remain to be delivered to fulfill the respective orders, and Precision warrants and covenants as one of the main considerations for the release specified in paragraph 7 hereof that the statement is complete and accurate and that Precision has no unfilled orders for said wrenches from any other concern, person, Government agency or corporation other than said Snap-On Tools Corporation. Precision further agrees that it will not, after the signing

of this agreement, take any further orders from said 1729 Snap-On Tools Corporation, or any other party, for torque wrenches of the kind hereinabove identified and that, as soon as said torque wrenches now on order are completed, it will discontinue the manufacture and/or sale and/or use of said wrenches, and Precision further agrees that it will not thereafter, directly or indirectly, infringe any of the claims of said Larson application, Serial No. 232,723, and said Zimmerman applications, or either of them, and any patents that may issue thereon. Precision further agrees that it will notify AMMCO promptly in writing when said orders on hand at the time of signing this agreement have been filled. Larson agrees to and shall be bound equally with Precision as to all of the provisions of this paragraph.

3. Precision and Larson each agrees not to directly or indirectly contest the validity of any claim or claims of any Letters Patent that may issue upon said Zimmerman and Larson applications.

4. Precision and Larson, jointly and severally, assign, transfer, convey and ~~reclaim~~ unto AMMCO all rights of every name or nature which they, or either of them, may now have or at any time claim to have in, to and under said Larson applications, or either of them, subject only to the provisions of paragraph 6 hereof.

5. Precision and Larson, jointly and severally, agree that said Snap-On Tools Corporation shall turn over to AMMCO, upon execution of this agreement, such 1730 monies as remain in a certain "defense fund" (built up by agreement or understanding between said Snap-On Tools Corporation, Precision and/or Larson) after deducting from such "fund" all necessary and legitimate expenses which have heretofore properly accrued as against said "fund". Precision and Larson, jointly and severally, agree to take every legal step deemed necessary by AMMCO and said Snap-On Tools Corporation to effect said turn over of said "fund".

6. AMMCO shall, and hereby does, grant to Precision a fully paid, non-divisible and non-exclusive license to manufacture, use and sell the gauge mechanism of said Larson application, Serial No. , it being distinctly understood that this license is limited to said gauge mechanism and that no rights are hereby given with respect to the manufacture, use and/or sale of any form of wrench.

with which said gauge mechanism may be employed, and that this license is not transferable by Precision except in connection with and as a part of the sale of the entire torque wrench business (and good will thereof) of Precision.

7. AMMCO, in consideration of the performance of all the foregoing by Precision and Larson, and each of them, does hereby release and forever discharge Precision and Larson, and each of them, and all of the customers of each of them, from any and all liability arising out of any claim or claims of any name or nature which AMMCO may have against them, or either of them, prior to the date hereof, on account of said Interference No. 77,565 and also 1731 on account of development of, dealing in and/or sale of torque wrenches coming within the scope of any of the claims of said Zimmerman and Larson applications, or either of them, and this release shall also pertain to any wrenches covered by the orders referred to in paragraph 2 hereof and not yet delivered to said Snap-On Tools Corporation.

In Witness Whereof, the parties hereto have caused this agreement to be signed in triplicate, Larson subscribing in proper person, and AMMCO and Precision by their officers, respectively, thereunto duly authorized and their corporate seals affixed this _____ day of December, 1940.

Automobile Maintenance Machinery Co.
(AMMCO).

By _____

President.

Attest: _____

Secretary.

Precision Instrument Manufacturing
Company (Precision).

By _____

President.

Attest: _____

Secretary.

Kenneth R. Larson.

1732 State of Illinois }
County of } ss.

On this day of December, 1940, personally appeared before me Frederick G. Wacker, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Automotive Maintenance Machinery Co., a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois }
County of } ss.

On this day of December, 1940, personally appeared before me Kenneth R. Larson, to me personally known, who, being by me duly sworn, deposed and said that he is the President of Precision Instrument Manufacturing Company, a corporation of Illinois, and duly authorized in the premises; that as an officer of and on behalf of said corporation, with authority, he signed, caused to be sealed and delivered, the foregoing instrument as the free and voluntary act and deed of said corporation and that the seal affixed thereto is its lawful corporate seal.

Notary Public.

State of Illinois
County of

} ss.

On this day of December, 1940, personally appeared before me Kenneth R. Larson, personally known to me, and by me personally known to be the person who executed the above instrument, who being duly sworn, acknowledged that he executed the above instrument as his free and voluntary act.

Notary Public.

1733

DEFENDANTS' EXHIBIT NO. 17.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 25, 1941

Mr. George B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois

Dear George:

We are wondering if Precision is living up to its agreement to discontinue the manufacture of Torqometers after the specified quantity per our settlement agreement with them has been produced. In other words, how many wrenches of this type have they made since the settlement and how many more do they intend to make?

Do you know of any way by which we could secure accurate information in this respect?

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.

By Fred G. Wacker,

Pres.

fgw/ms

950

Defendants' Exhibit No. 19.

1734

DEFENDANTS' EXHIBIT NO. 18.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill., July 1, 1941

Mr. Fred Wacker
2100 Commonwealth Ave
North Chicago, Ill.

Dear Mr. Wacker:

In reply to yours of June 25, regarding P. I. M. Co. I have secured some information and expect more about July 5.

Will you let me know when I may see you as I believe I can tell you more in person than I could by letter. I prefer evening or week end when and where you may select.

Very truly yours,

George B. Thomasma

P.S. I am pleased to do all I can in this matter for you.

1736

DEFENDANTS' EXHIBIT NO. 19.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Metterhead of Automotive Maintenance Machinery Co.—
North Chicago, Ill.)

December 27, 1940

Davis, Lands, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

Re: Larson v. Zimmerman, Interference No. 77,565.

This will acknowledge your letter of December 26 together with the enclosures referred to in your letter with respect to which I have carried out your instructions in each case.

I am returning herewith the following:

1. Duplicate original Automotive Precision-Larson agreement, which I have initialed twice on page 4 where deletions were made as per your instructions.

2. Check in the amount of \$500.00 from Snap-On Tools Corporation to Automobile Maintenance Machinery Co. which we have endorsed to the order of your firm.

I also acknowledge receipt of your second letter of December 26 enclosing copy of your letter to Mr. Thomas Raftery, the reporter who reported Larson's testimony. Your letter together with this enclosure requires no comment on my part.

Well, now that the odor of this unpleasantness is becoming more remote it is indeed a relief to feel that it is successfully behind us.

As you already know I very much appreciate your good efforts in our behalf and those of Jack, Harry Lindsey and your other associates; and I congratulate you all on the outcome.

While this has been an expensive procedure and while we did not collect any damages, you were completely successful in securing our patent, in tying Snap-On into the picture and in saving us from plenty of future worry, effort and added expense.

With Best Wishes to you all for a Happy and Satisfactory New Year.

Very sincerely,

Automotive Maintenance Machinery Co.

By Fred G. Wacker,

Fred G. Wacker,

Pres.

fgw:ms
enc. 2

1738

DEFENDANTS' EXHIBIT NO. 21.

(Filed Aug. 16, 1943 at 9:55 o'clock A. M. Roy H. Johnson,
Clerk.)

Thomasma Affidavit.
Davis, Lindsey, Smith & Shonts
332 S. Michigan Avenue
Chicago

(Notarial Seal) 11-15-49 G. B. T.

1739

IN THE UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

Larson,

vs.

Zimmerman,

Interference No. 77,565.

County of Cook, }
State of Illinois. } ss.

I, George B. Thomasma, having been duly sworn, depose and say that the statements hereinafter set forth were made by me in response to questions propounded by R. E. Fidler of Davis, Lindsey, Smith & Shonts, 332 South Michigan Avenue, Chicago, Illinois, attorneys for Automotive Maintenance Machinery Co., on November 7th and 8th, 1940; and that I have carefully read the statements following hereinafter, each page hereof being initialed and dated by me, and I know that they are true and correct.

My full name is George B. Thomasma. I live at 1121 Potter Avenue, Park Ridge, Illinois. My address used to be R. R. 1, Des Plaines, Illinois, but now this is in the Park Ridge post office.

I am not employed by the Hack Machine Company, 1228 Harding Avenue, Des Plaines, Illinois. I have been employed by that firm since February, 1940. Prior to that time I was employed by the Boyar-Schultz Corporation, Chicago. I was with them from the last week in June, 1939 until about February 14, 1940. I started with the Hack

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Machine Company, a few days after I left Boyar-Schultz.

1740 My trade is that of a machinist—sometimes they call me a toolmaker, although my trade is that of machinist.

Before I worked for Automotive Maintenance Machinery Co. I worked for the Monarch Machinery & Tool Co., 622 Clinton St., Chicago; now at 4450 W. 5th Ave., Chicago. I was there from March 1, 1923, until I left to go to work for Automotive in 1927.

I saved AMMCO \$1500.00 in connection with some materials that were purchased from Monarch, but I never received any credit for this.

Before I worked for Monarch, there was a lapse of some time in my employment, for how long I can't remember. My father and I repaired machinery in more or less of a haphazard way. I worked for my father in the repairing of wood-working machinery in Chicago. Then my father bought a place in Lake View and we did some repairing and remodeling there. He bought the place for \$6500.00 and sold it for \$15000.00. My father left Chicago then and built a place in Elgin. I then got married and went to work for Monarch.

In between the time I worked for Monarch and my last place of regular employment, I worked with my father as stated. Before working with my father I worked for the Chicago Machinery Exchange. I started to work for that firm right after the Armistice in the fall of 1918. I was there until about 1920 or 1921. The names of the men I was associated with at that time were: R. G. Ball, Norwood Park, manager; A. S. Coken, Sales Mgr.; Waldemar Gjersten, President and Benchers, now with the Second Hand Machinery Company on Lake Street.

It was at the Chicago Machinery Exchange that the codes FOG, etc. originated and it was like this:

The name involved in "Fiskeguano", each of the letters being numbered consecutively from 1 to 9, and 0, in the order mentioned. The adopted that code because the second 1741 hand machinery there had a tag applied and it had the name of the machine and a brief description of it, i. e., its capacity and size and what it would cover and in order that the salesman might know what the machine was for if

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they were showing it to a prospect. It was used as the price of the machinery and if the prospect had something that he was going to trade in on the machine the salesman would add on to the price a little more and the customer would not know anything about it—or, if there was a straight deal to be made (one without a trade-in) then the salesman could quote a straight price. That was the purpose of the code; it represented the price of a piece of machinery and any time that the machinery would be picked up thereafter you could look at the tag representing that piece of machinery and tell what the machinery sold for. It never left the machine—it stayed right with the machine until it was sold. It was then picked up and attached to the rest of the papers and kept with the files of the bookkeeping department. There was always a definite price in relation to the code number fixed for every machine before they went out. In other words, the code number was the price that they had to get, and the salesman was not to sell the equipment for below that price. I gave that code system to Larson and it was applied to the first few wrenches that were made—eight or nine of them, whatever it was.

These wrenches were made in the early part of 1938.

1742 I know Kenneth R. Larson. I can't say definitely when I first met Larson. I knew of his association with the Auto Parts Machine Company. I first met him when he worked there. This was about a year or two before I sold him the pin hole boring machine. I don't remember how I happened to meet him—just more or less of a chance meeting. I knew that he was associated with this parts house and my contact with him there in a small town.

I have lived at my present address going on 16 years. I own my own home entirely. I formerly had a Des Plaines address—my address formerly was Box 130, Route 1, Des Plaines, Illinois. That address is fairly close to the Des Plaines area. I never lived close to Mr. Larson.

Prior to living in Park Ridge I lived in Chicago. I lived there about a year and a half—we lived in a flat. Before that I lived at home with my father.

I have a brother in the McCormick Building. His full name is John Thomasma. My father is still living—he lives at 170 Wilcox Avenue, Elgin. He manufactures armature wedges for electric motors. His business is known

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G. B. T.

under the name of G. J. ~~Thomasma~~—Maker of Armature Wedges. He is a highly skilled worker and expert in connection with woodworking machinery and has done a great deal of work in connection with woodworking. Has been called as an expert by Earl Hart and the Fader Machinery Co.

1743 I have had some experience in woodworking—I have repaired and rebuilt woodworking machines. I don't like this work particularly on account of the dust and shavings—they have always been way behind metal machines. I almost went to work for Fader last winter, but on account of some trouble which Fader was having with his partner I decided not to.

I have never made any patterns—I recognize them and can check a pattern and a blue print and know whether one is right or wrong, but I have never done any work as a pattern maker.

I have not done any casting or foundry work. I can check castings from a blue print and tell whether they are right. My foundry experience is very limited.

I have done a great deal of heat treating work.

After I first met Larson, and up until May, 1936, I saw him very little and when I did it was merely by chance. I sold Larson a piston pin hole boring machine in May, 1936, and these are the circumstances.

Larson had learned of it and he came to me knowing of my connection with AMMCO and he asked me what I knew about it. I explained briefly what it would do and he asked if he could have a demonstration of the machine with his partner, Jack Kamppinen present. I did that through AMMCO and demonstrated the machine to him on a Sunday morning up at North Chicago. It was in the spring of 1936. At that time Larson was working for the Auto Parts Machine Company.

1744 Mr. Fidler: "Do you know anything about his connections at that time and any plans that he might have had?"

Mr. Thomasma: He was contemplating setting up a company of his own at that time—Jack Kamppinen and Kenneth Larson.

Q. What was the outcome of that demonstration?

A. They were favorably impressed with the job that

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G. B. T.

the machine did and assured me that they would like to own one and said it was just a matter of time until they got their shop organized that they would purchase one. They finally signed the order for a P. R. machine and I turned the order in and delivered the machine in person.

Q. Was there anything about the taking of that order that makes it stand out in your mind particularly?

A. One thing—it was a time payment deal.

Q. How about that—you got your commission?

A. I received my commission and I could tell the circumstances of the commission and the two checks, etc. Westphal didn't give me but 15% and then he gave me another check in which he added 5%—that is, it would be 5% when the \$5.00 was added to it when the payments were completed.

Q. In connection with that deal how many times was Larson at Automotive Maintenance Machinery Co.?

A. He was there a total of three times—once for the demonstration and on another occasion, when a little pressure was put on him by Westphal because he was in arrears on his payments, he came up because, as he stated, the machine was not satisfactory. He used that as an excuse for not keeping up the payments, that is that the machine was not working satisfactorily. He came up with the head of the machine, minus the base, and he said he hadn't made the payment because he was dissatisfied with the machine and that it wasn't working satisfactorily.

Q. How long after he got the machine was that?

A. We can establish that date. He complained directly to Mr. Allen on that occasion and I distinctly remember that that was during the lunch hour period up there—I saw him drive up there with his car. I was looking out the window and the next thing Mr. Allen called me into the office and told me about him being there and the fact that the machine was not functioning properly. He asked me if I could do anything about it. I told him that if he would bring it up to the second floor, we would correct it if we could—he took the machine back then. I was considered to be an expert operator of that machine. I personally delivered the machine to the K & L Motors. When I delivered it I demonstrated it and tested it. They called me back there that evening after dinner and they had

(Notarial Seal)

11-15-40

G. B. T.

played around with the machine and they had the tool bit in it wrong. They asked me why it would not operate correctly. I replaced the tool bit and then it worked all right. That was on the day of delivery. The next time I was up there was when he was in need of the over-sized equipment. He talked to me about the Kwik-Way equipment before he gave the order for the P. R. machine. That was before I delivered the machine to him. Possibly two or three weeks before.

Q. Did you ever see a Kwik-Way wrench at his place?

A. Yes. The first time was when I went there after the order for the pin hole boring machine and he apparently had gotten the Kwik-Way wrench just that day or the day before. He was proud of it and explained it to me. That was before he gave me the signed order for the P. R. machine.

Q. What did he have to say about the wrench?

A. He said that he thought it was a very good piece of equipment to have and that it would prevent gasket failures and prevent cylinder distortion and gain equal tension on all nuts and bolts. He said that there was a chart that they supplied with the tension wrench that would give a man a definite, predetermined tension to draw up nuts and bolts of given sizes.

Larson mentioned nothing at that time about any wrench that he had. I gave him no pointers at that time about torque wrenches.

Q. At that time, was AMMCO making a torque wrench?

A. No.

Q. After you delivered that machine and demonstrated it, did you ever go back to the K & L Shop?

A. I was there occasionally at intervals spread out. For instance, I went there to tell them when they were in arrears with their account on the P. R. machine and I also stopped there to borrow their Kwik-Way tension wrench to take it up to AMMCO for them to look over and talk about. Later AMMCO bought one to eliminate that borrowing. They had none when they borrowed Larson's. They borrowed it on one or two occasions—I would get it and bring it back the next evening—it was never kept more than one day. It was only borrowed on one or two occasions.

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Q. Did you ever deliver any other machinery there—that you might have sold to him or that you demonstrated.

A. I talked to him about the engine rebuilding equipment but, for some reason, he was enthused about Kwik-Way equipment.

Q. Did you try to sell him rebabbitting jigs?

A. I did talk to him about it but I was hesitant about taking any orders from him because he was not very good pay according to Westphal. When AMMCO came out with their coil spring wrench, he wanted one of those. That was in the Fall of 1936, but he didn't get one because he was in arrears on his old account. Westphal said he wanted to sue them or put them in the hands of a collector. I passed it off because they were behind in deliveries and said that when they were caught up, I would see about it.

Q. How many times did you say you saw him and talked to him during 1936, after delivering the P. R. machine.

A. Probably 10 or 15 or 20 times.

1748 Q. What was your next contact with him after he asked you about the coil spring tension wrench of AMMCO's or with respect to any of AMMCO's products other than possibly trying to sell him on the rebabbitting equipment?

A. The oversized equipment was next and he came over to see if I could get it for him that evening.

Q. State in your own words what the circumstances were leading up to that and what happened.

A. He came over to my home that evening urgently in need of this oversized equipment and it was after business hours and the only thing that I could think of was to get in touch with some one in-charge at the plant to get it for him. I went to Mr. Zimmerman's home, but he was not at home. His daughter suggested that we call Mr. Wacker or Mr. Allen. We called Mr. Allen at his home and he O. K.'s going up to the plant to get the specified oversized equipment for this machine. He made a note of what equipment we got at that time and we took it back to Des Plaines in Larson's car.

Q. Were torque measuring wrenches discussed at that time?

A. No, there was no mention made of a torque wrench

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at that time. We were not in a place at the plant where he could have seen any torque wrenches—we were on the first floor and there were no torque wrenches in evidence on the first floor at that time as I remember.

Q. Do you know anything about the tension wrenches developed at AMMCO?

A. Yes, I spent a good deal of time in the development of tension wrenches at AMMCO.

1749 Q. You were sort of a foreman or something, weren't you?

A. What they call a key man. I never had the title of foreman or boss but I directed some of the men at times and had some of the boys with me on various jobs. My time was always turned in as hour time or day time. That's another thing that was always explained to me, that inasmuch as I was an hourly man, AMMCO had no claim on anything that I would do.

Q. You always turned in time slips, then?

A. Yes.

Q. What was the first type of wrench that you worked on at AMMCO?

A. The first kind of wrench worked on was the coil spring.

Q. Did AMMCO go into production on that wrench?

A. Yes, I understand the total output ran up to about 25,000 units.

Q. Was there anything about that wrench that stands out in your recollection?

A. It was difficult to reproduce them in quantities and make them uniform because of the coil spring.

Q. What did you figure and tell others at AMMCO was the difficulty?

A. I suggested then that if they used a round instead of a square coil spring, that that would be more desirable and more controllable, or more easily controlled.

1750 Q. I am still talking about the coil spring type.

A. I suggested the use of a round cross section for the wire of the coil, whereas they were using a square wire.

Q. When was that wrench put on the market?

A. It was first shown at the show in December—in 1936—in the fall of 1936.

Q. How long did AMMCO continue to make that particular kind as their standard wrench?

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A. About a year, I believe.

Q. Did they continue to make wrenches after that?

A. Yes.

Q. What kind of a wrench was that?

A. It was a flat spring or rather an oblong-shaped spring of alloy steel.

Q. That was a wrench that had a casing with a handle on it and had on one end a member that turned in the casing and which would be engaged with the nut or bolt, which member had an arm or forging extending back through the casing and which had connected to its free end a flat or rectangularly shaped spring bar?

A. That's right.

Q. How was the other end of the spring bar associated with the casing?

A. One end of the spring bar was riveted to the forging. The other end was in between two rollers—pivoted in the casing.

Q. Did you have anything to do with the development of that wrench?

A. I worked on it to some extent.

1751 Q. Does anything stand out in your recollection with respect to that wrench?

A. It was heavy to handle. It was difficult to keep that spring bar tight in the forging.

Q. Was there anything about the shape of the spring bar?

A. The spring bar, I thought, should be round instead of rectangular.

Q. That was one suggestion that you made to Zimmerman respecting that wrench?

A. I suggested we use the round spring and omit the forging and he said that that couldn't be done—to forget about it.

Q. As I understand it, you did not suggest, to begin with, that they use that scheme of the casing with the rotatable head member and a straight spring bar in the casing with the pivotal connection between the spring bar?

A. Not specifically, no.

Q. What happened when you made the suggestion that they use a round spring bar?

A. Nothing happened except that I was told that it wouldn't work and to forget about it.

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Q. Now, were you in on the testing of that wrench?

A. Yes, I did considerable of the testing.

Q. Who worked with you on the testing of it?

A. Carl Crook.

Q. Did Mr. Zimmerman do some work with you in testing?

A. He would spend a little time at various intervals with us and make notes of what we were doing as to the uniformity of wrenches, etc.

1752 Q. In those tests of the wrench, did you find that it operated satisfactorily as a torque or tension wrench?

A. Well, they were satisfactory except that it was also difficult to duplicate them in quantities with any degree of certainty because of the rivets loosening after a certain amount of tension would be applied—they would stretch—they would let go a little—the dial would go off—you couldn't make a different dial for each wrench.

Q. What did you do in testing those wrenches?

A. Well, we put them on the test beam and used a weight a given distance from center—that is, a definite known weight at a given distance from center—and then used the wrench to lift that weight.

Q. You found that the wrench would show on the gauge the pressures being applied and that they did that satisfactorily?

A. Within three per cent, I believe—that was the allowable error.

Q. AMMCO went on the market with that wrench?

A. That's right.

Q. When was it that you were doing that testing work?

A. That was during 1937.

Q. When was it with respect to the time that you took Mr. Larson to the plant to get the oversized fixture—before or after?

A. We got that oversized equipment in October 1937. This testing, then, occurred all during 1937 prior to and after that—that is, the testing I was doing. I was even testing after they got into production on the wrench.

Q. At any time during the year 1936 that you happened to see Mr. Larson, and also during 1937, did he mention to you anything about any tension wrench that he had other than the Kwik-Way wrench?

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1753 A. No.

Q. When you borrowed the Kwik-Way wrench for AMMC at times, was anything said about any torque wrench that Larson might have had?

A. No.

Q. Did you ever discuss with Larson any torque measuring wrench, other than the Kwik-Way wrench and the coil spring wrench that have been referred to, at any time?

A. Not until 1937.

Q. Was that before or after he got the oversized piston fixture?

A. After.

Q. About how long after?

A. In November of 1937.

Q. Have you any way of fixing that date?

A. Nothing definite other than that it was after getting the oversized equipment—I would say a few weeks after.

Q. State in your own words the circumstances surrounding your discussion of the wrench with Mr. Larson. You can tell about your ideas—your feeling with respect to the matter and that you had gotten the ideas and that you had indicated to Zimmerman about the round spring, etc. and about hooking the spring bar directly on to the head member and that, since they didn't pay any attention to you, you decided to work out at home your own ideas with respect to a wrench.

A. In November, 1937 Larson came to my home—I can't be sure of the purpose of his visit—I was down in the basement at the work bench and that is when we talked about the tension wrench and the possibility of making a tension wrench with a round spring attached to a head and
1754 he immediately saw that there was something there and we agreed to work together on it.

Q. What did you show him that night?

A. I think all I had to show was a socket and a piece of drill rod and a socket wrench handle.

Q. What did you explain to Mr. Larson at that time?

A. Well, I went into the subject of tension wrenches and that he was enthused about them, having used the Kwik-Way wrench, and that I thought that this could be worked out to advantage. We discussed, then, the putting in of an aluminum casting. He didn't even know what it was all about and I suggested that we put a dial mechanism of

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some sort on there to measure the amount that this rod would bend. From my description, he then saw the picture of what I meant. He made the pattern on his own for the first casting and from there on we worked together on the machining of it and the machining of parts. I knew what to use and how to go at it and he had the lathe there on Pearson Street and he also had the facilities to get in and out of Chicago to get the necessary materials. Even then he was going to get around me. I suggested that we use a good steel for the bar and he was going to use ordinary spring steel and that was found to be "no go".

Q. What happened to the ordinary spring steel?

A. Well, if you would bend it or apply pressure in bending it, it wouldn't return to its normal position—it would exceed its elastic limit.

Q. Did you see Larson make those first patterns?

1755 A. I didn't see him make them. He made them on his own. I did see the patterns when they were finished.

Q. After you told Larson what you had, what did he say—that first time he came into your basement when you showed him what you were doing?

A. Only that he thought it was a good idea and that we could work together on it.

Q. Do you know whether he had any reason for making a statement of that kind?

A. No, other than personal gain.

Q. What about his own business at the K & L Shop?

A. It was not so hot. His own business, financially, was not what it should have been.

Q. How did he happen to go ahead and make patterns?

A. Well, he took that entirely on his own inasmuch as I had no way of making them—he took things in his own hands and it was just a matter of a day or so until he had castings made.

Q. Did you see him make the patterns—do you know where he got the wood or anything for the patterns?

A. No. That would be available in Des Plaines or he may have had some in his own basement.

Q. The castings that he had made were finished and machined on the lathe in his own basement?

A. No, the machine work for the castings was done in

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the K & L Shop. I was there when that was done. I worked with him on the machining of the castings.

Q. What machining did they require?

1756 A. A drill press and a lathe—you had to finish off the surface where the cover would fit.

Q. Who did that?

A. He did that with his machinery.

Q. Who drilled the holes for fastening on the cover?

A. He or I drilled them—I do not remember—he put in a lot of work on them for he had more time than I had.

Q. Do you remember any particular work that you did on the castings—the first ones?

A. There wasn't so much work on the castings. I made the heads out of chrome-vanadium steel and machined the springs out of Columbia tool steel and then directed him as to the hardening of them. He had a grinder there for the purpose of grinding them. He ground them. I didn't do any of the heating treatment of them. I told him to take them to the Lindberg Steel Treating Company.

Q. Larson says that he had a little furnace about the width of a brick and the length of two bricks for a blow torch. What did he heat treat with that furnace?

A. He could heat treat those chrome-vanadium heads.

Q. Where is that Lindberg Company?

A. I think they are on North Laflin Street, Chicago. (218 No. Laflin Street, Chicago, Ill.)

Q. How many first castings did he have made?

A. Two—one with a straight handle and one with a round handle.

Q. The Ravenswood Foundry did those?

A. Yes.

1757 Q. He said he took sold old pistons and had them melted down.

A. If he did, I don't know about it. That is an entirely different kind of metal.

Q. Could he have taken in some aluminum pistons?

A. He may have traded them in for an allowance on them—that could be possible, but it never came to my attention.

Q. There was a second set of patterns made up?

A. I watched him make the second set of patterns. They put a flare on a later set of patterns. As near as I understand it, that was at Snap-On's suggestion—to pro-

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test the dial mechanism: Larson, I'll bet, refers to 'haf as a "ship's prow."

Q. He produced some spring bars shown by the photographs.

A. Real long ones?

Q. They were the same diameter all the way through—one of them is broken.

A. That was the fault of the heat treating.

Q. The other one is not broken,—it has a place for a pin through the end. Later on comes the shorter one.

A. Yes.

Q. There is another one with a little extension on the end of the spring bar and a sleeve slipped on that.

A. Yes.

Q. Another one with a reduced diameter rod.

A. Yes, I know all about those developments. —That drawing made by the high school boy—I made that drawing. John Thomasma, my brother, watched me make that drawing.

1758 Mr. Fidler: You are here to tell the truth and if it hurts you can't help it. You want to clear yourself in this picture. You don't think you have done any wrong but you want to show that you haven't, because somebody would like to make you the goat in this thing.

Mr. Thomasma: That's right.

Q. How long did it take you to make the drawing that John Thomasma witnessed?

A. About four or five hours.—I made it at home in the living room of my home.

Q. Who else saw you make it?

A. My brother's wife, Mrs. John Thomasma, and my wife. As to anyone else, I am not sure.

Q. When was that drawing made?

A. I believe it was in June 1938. Mrs. Thomasma went to a certain movie that Sunday afternoon and when he came home I was half way finished with it. My brother came in. It was on a Sunday afternoon.

Q. How did you happen to make it?

A. Well, it was just that—it was a backward procedure—we had made the wreaches—several of them—and no drawings or sketches at any time. It was at my suggestion or Larson's that we make a drawing of the whole scheme and it seems that he suggested that I make it.

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1759 He had been doing more of the work than I had and he felt that I should make the drawing for I had the necessary materials, etc.

Q. Did you have a tool before you to make it?

A. Yes, to take the dimensions from.

Q. What did you use to measure the different dimensions?

A. I had a draftsman's square and rule—I had most of the dimensions memorized—I knew the various sizes.

Q. Could you identify the particular wrench that you used in making the drawing?

A. Yes I could.

Q. And you could measure it up and check the figures on the drawing?

A. Yes.

Q. Where did you get the paper for that drawing?

A. From Larson—it was his paper. It was peculiar drawing paper—it was suitable for drawing, although it wasn't what a draftsman or machinist would refer to as drawing paper.

Q. Have I at any time that I have talked to you told you anything about where that paper for that sketch came from or told you anything about Larson's testimony in that respect?

A. None whatever.

Q. Did you go and get the paper yourself or did Larson get it for you?

A. He handed it to me. He had it in his basement. I saw it there—it was rolled up—I would refer to it as more or less of a wrapping paper in a roll form. It was almost a light tan color. Very light tan in color—I guess you call it beige.

1760 Q. You have never seen the actual drawing since you have been talking to me?

A. No I haven't.

Q. Was it paper that had anything to do with wood-working drawings?

A. It would be used in making pencil drawings—I have been in cash and door mills and in some woodworking plants where the draftsman will make a drawing and a man in the plant will make sketches from that drawing and they will take sketches off of that for various divisions in the plant.

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I have never seen that practiced very much in metal working plants.

Q. How much of that paper did he give you at that time?

A. Possibly two yards of it—roughly.

Q. Did you make more than the one drawing from it.

Q. Just one drawing, as I remember. I crowded everything on that one sheet.

Q. Do you remember what you did with the part that you had left?

A. I do not remember if I had any left over. If I did, I didn't preserve it.

Q. No possibility of any of it being around your house now?

A. As I remember it, there may have been a little bit more than to cover my drawing board. My board is 27x37 I think.

Q. Would he have been likely to just give you enough for one drawing—wouldn't he have given you enough so that you could use as much as you wanted?

Q. I may have a piece of it. At that time it didn't seem important. I just unrolled some of it and cut it off.

1761 Q. Did Larson tell you or do you know where he got that paper?

A. No.

Q. Was it clean or was it dusty?

A. It was clean—it wasn't soiled, although it was dusty from being in his place for some time—it had collected dust.

Q. What is your best recollection at the moment as to the time you made that drawing?

A. Approximate time of the year?

Q. Yes.

A. I think it was along in June of 1938—we can fix that date definitely—I think it was in June.

Q. After you finished the drawing that day, did you keep it a while or did you turn it over to Larson?

A. It was not completely finished that Sunday—I turned it over to him sometime during that week, possibly Tuesday or Wednesday of that week.

Q. Do you know what Larson did with it after you turned it over to him?

A. I never saw it after that.

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Q. Were there any names or any identification marks that you may have put on it?

A. None whatever, other than I would recognize my own marking.

Q. In making the drawing, you didn't do anything peculiar that would stand out in your mind the minute you would see it?

A. Nothing in particular.

Q. Did you put any date on it at the time you saw it?

A. None whatever.

Q. Did you ever see it with any name or date on it?

1762 A. None whatever.

(Mr. Fidler shows Mr. Thomasma a photostatic copy of the drawing in question.)

Q. Do you see Ronald F. Ford, Edward S. Dawson and Kenneth R. Lawson (owner)?

A. Yes.

Q. I have shown you a photostatic copy of the drawing marked Larson Exhibit 27 in Interference No. 77,565 and ask you whether or not that is the drawing that you have been referring to that you made?

A. That's it—perfectly.

Q. Who put on the lettering and the words that appear on this drawing?

A. I did.

Q. Who put the figures and dimensions that appear on it?

A. I did.

Q. And what did you use to put on those words and numerals?

A. Pencil.

Q. What equipment did you have for doing that kind of work?

A. A drawing board, T square, draftsman's square and rule, compass and a pencil and an eraser.

Q. You made erasures from time to time?

A. That's right.

Q. Now, referring to this wrench—the wrench shown in Larson Exhibit 27—as you have stated, you had an actual wrench before you—what was the purpose now in making up this drawing?

A. To have a drawn record of our parts and sizes for reference.

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Q. Were you getting ready for anything in doing that?

1763 A. No we weren't anticipating anything that we were getting ready for—we had been working along and following what I termed a backward procedure, making parts with no drawings or notes for sizes and dimensions for our own records, which is necessary.

Q. Do you have any ideas about the keeping of records and what you should do in that respect?

A. I believe in keeping records of all parts and dimensions for reference and for convenience.

Q. Now, referring to this sketch, Larson Exhibit 27, and the wrench from which it was made, please state just what parts of this wrench that you helped make and what you did in helping to make them or finish them.

A. Too bad that this isn't larger. There's a part marked H14—it is strictly old matter. The head member, I made that. I helped in the laying out and drilling and tapping of the case and cover—that's another one of my ideas, and then put the instrument on the case instead of on the cover. I had a particular reason—the cover can do tricks and not be constantly uniform. I put it on the body, which I thought was correct. That was my idea.

Q. You put the gauge back at the handle, I believe.

A. Right as near to the handle as possible so that it could be seen. That was my own idea. I got that idea from experience that I had at AMMCO. They had theirs farther from the handle.

Q. The coil spring wrench which had the gauge at the extreme end opposite the handle? The coil spring
1764 wrench that originated at the Grip Nut Company—that's the Sharp patent.

A. There's a part that I made.

Q. That's the T-shaped gauge plate?

A. That's right—they're hand made.

Q. Where did you make that?

A. In his basement. Another thing—he and I joined together and bought a lathe—you can verify that at the Des Plaines National Bank. We bought it in order to get out of the K & L Shop. We used it for the wrench.

Q. You actually had it delivered?

A. We bought it second hand—borrowed the money. It was stored in the corner of the Automotive Service

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Station—where they grease and wash cars. Larson had a boyfriend pick it up and deliver it to his home.

Q. How much did you pay for it?

A. \$125.00. We borrowed \$100.00 to go with what we put in together. I paid \$15.00 and he put in \$10.00. He has a receipt. It was left in his name. The money was borrowed in our joint names.

Q. Whom did you buy it from?

A. I don't know the name. The address is Ellinwood Avenue and Graceland in Des Plaines. He had it stored there. He had no use for it. He stored it there and then moved it to Larson's basement and proceeded to use it.

Q. Was that the lathe that you used to finish whatever wrenches were made after you got together with Larson?

A. Yes, one of them.

1765. Q. What went with it—what tool equipment?

A. There was a counter shaft with it and some tool holders.

Q. Any finishing tools?

A. Well, by finishing tools, you mean—

Q. Cutters of any kind?

A. No cutters—no tool bits with it. I think it had a chuck and a couple of wrenches and a steady rest.

Q. Where did you get the tool bits that you used?

A. He had quite a number of those.

Q. Did he have a lathe at that time?

A. He had only wood turning lathes before that in his basement.

Q. Would they be adapted for work of this kind?

A. No.

Q. He, up to that time, didn't have available in his basement any kind of lathes or other tools that he could use to finish these wrenches?

A. No, other than this wood turning lathe and a wood saw for cutting wood.

Q. Do you know what became of that lathe?

A. It is now the property of the Precision Instrument Company.

Q. Do you know how it happened to be in their possession?

A. Well that was turned in as the setup of the corporation as part of the machinery and tools and fixtures

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and equipment that was turned in on the corporation in the setup.

Q. Did you get any shares of stock based on your interest in that lathe?

1766 A. The stock that I received was based on the tools that were turned in. The corporation minute books show that. I took a look in there a few weeks ago to satisfy myself as to that. It is written in there all itemized.

Q. Did you get any shares of stock based on your contribution with respect to the wrench?

A. No, none whatever.

Q. Did you receive any compensation at all in any way for what you contributed?

A. For my work on the wrench—none whatever.

Q. As I understand it, you suggested the wrench idea to Larson?

A. That's right.

Q. Did you just give him the wrench or did you get paid some way for it?

A. I received no pay in any form in money.

Q. Well, I mean, your stock would have no connection whatever?

A. No, no connection whatever—that is, in writing—there is no record in writing.

Q. Was there any other understanding between you and Larson in that respect?

A. There was a verbal understanding between Larson and I that we were to be partners on the wrench but there was nothing in writing to that effect.

Q. Well, then, wasn't that the reason you got that many shares of stock?

A. I believe it would be.

Q. You got 300 shares to begin with and Larson got 300 shares?

A. Yes.

Q. And then you gave up 40 shares each for Carlson?

1767 A. For Carlson's efforts in promoting the selling of the stock.

Q. How many shares does Carlson have?

A. Now, according to the records, 110 shares—he bought 30 shares.

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Q. The machinery and tools, etc. that you had an interest in and that you turned in, of course, wouldn't amount in value to the value of stock that you received?

A. No.

Q. And I understand that you would testify that the shares of stock that you received paid in part for your contribution with respect to the wrench?

A. That's right.

Q. Did you turn over any inventions or any contributions of any kind not related to the wrench to Larson or Precision Instrument Co. for any interest in stock?

A. None whatever.

Q. When was it that you made the head marked H or 14 on the drawing Larson Exhibit 27--do you remember when that was?

A. I would say in December, 1937.

Q. And how do you fix that date?

A. Well, it was close to the Holiday Season, it was the latter part of December.

Q. Was it before or after the time that you went with Larson to AMMCO's plant to get that oversized piston fixture?

A. It was after the trip to AMMCO for the oversized equipment.

Q. As I understand it, at that time nothing had been done on the wrench between you and Larson?

1768 A. That's right, nothing was done.

Q. It was after that that he came into your basement and saw you working on something and you told him about the wrench?

A. That's right.

Q. Now, the part marked 15 on Larson Exhibit 27 is what?

A. That's the spring bar.

Q. Did you have anything to do with the making of the spring bar for the particular wrench of which this drawing was made?

A. I believe I turned them on the lathe, that is, rough turned the diameter. The heat treating was done by the Lindberg Steel Treating Company and Larson did the grinding at the K & L Shop.

Q. Did you have anything to do with the reduced tail piece that is on this spring bar 15?

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A. There is nothing to that, just a piece of bar stock—no machine work required.

Q. Do you know who made it?

A. I cut off some of them, I believe. There's nothing to that.

Q. This drawing also shows some gauge parts. What do you know about them?

A. This is a little piece of stock (referring to E on the drawing). I believe that's 3/16 diameter and then bent over and flattened and a little slot sawed in there. He made those up—I saw him make them.

Q. Where did he make them?

A. I think the first ones he made in the K & L Shop.

Q. When do you remember?

A. In January 1938.

1769 Q. That was after you sold him the piston fixture?

A. Yes.

Q. What about the part marked "D"?

A. That represents a little segment and there are teeth in them. These were purchased. He bought those from the Wetzig Manufacturing Company.

Q. What about the part marked "C"?

A. That's turned on the lathe out of a little piece of stock. He made that.

Q. Did you see him make it?

A. No, those were done when I wasn't there.

Q. What about "B"?

A. That's a little hair spring. He bought those from some clock or watch parts company.

Q. Do you know the name?

A. I don't remember the name.

Q. Now, referring to the casing marked "K", what do you know about that?

A. They were made of aluminum from wood patterns and he made the wood patterns.

Q. Did you see him make the wood patterns?

A. Not the first ones.

Q. Do you remember what the first ones looked like?

A. They were black.

Q. Is that unusual?

A. Not particularly unusual. It is common practice, in patterns, to make a mixture of lamp black and shellac and paint them black.

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Q. Do you know where he got the lamp black?

1770 A. I think he had it—he must have had it on hand.

Q. Did you see him put the shellac and lamp black coating on?

A. Not on the first patterns. I saw him coat others later.

Q. You have seen, though, the first ones?

A. I saw the first patterns, yes.

Q. You haven't seen those patterns, or photographs of them, since you talked to me?

A. No.

Q. What did they look like?

A. They were black patterns and one had a peculiar large handle or grip and one had just a small round grip that could be easily identified.

Q. What about the shape of the casing? In other words, this is not it? (Referring to the drawing Larson Exhibit 27.) I show you a photograph and ask you if you see anything on it that looks familiar to you.

A. These patterns are the first patterns that he made.

Q. The patterns which are black and which are marked Larson Exhibits 6, 7 and 8, is that correct?

A. That's right.

Q. Now, I still haven't told you anything about how these patterns were used or how castings were made from them, have I?

A. No.

Q. Do you remember what the purpose was of this casting having the straight handle and the round handle.

A. The round handle could be slipped on over the straight handle of Exhibit 6 to save making a new pattern.

1771 Q. What was the very first pattern piece made there?

A. Exhibit 6.

Q. How did it happen that the pattern piece Exhibit 8 was made?

A. That was to be attached to this—slipped over it to provide a ground grip on that handle.

Q. Was the wrench to begin with to have just a handle like Exhibit 6 or was it to have a round handle like Exhibit 8?

A. The fact was we didn't know what kind of handle we wanted. By making one casting off the pattern in this form

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and by making another and slipping it over, we had one of each, to determine what we wanted.

Q: Do you know where Larson got the information for the dimensions that he used in making the patterns?

A: Largely from collaboration with me.

Q: How would you have any ideas in that respect?

A: From my experience in working in that field at AMMCO.

Q: Now, you didn't see Larson make those patterns, did you?

A: No, for Exhibits 6, 7 and 8 I didn't.

Q: Did you see them after they were made and before the castings were made?

A: No, the first I saw them was when he had the castings made.

Q: When Larson came to your home that evening and you were down in the basement, how did he happen to come down there to the basement?

A: I don't know what directed him down there, but I was down there. He could know that I was there. There's a window in my driveway overlooking the bench where I was at the time. If he came in through the house or through the garage entrance, I don't know, but he came down there.

1772 Q: What kind of heating equipment do you have in your home?

A: Hot water heat.

Q: What kind of fuel do you use?

A: Coal.

Q: What kind of furnace do you have.

A: I have a hot water boiler, fed with an automatic coal stoker.

Q: How long have you had that?

A: I think three or four winters. I think I bought it in the fall of 1937.

Q: Did you ever take Larson down there and show him your new stoker?

A: I did show it to him when we first got it. However, he showed no particular interest in the stoker—where he was living he had oil heat.

Q: How early a date did he first come to your house?

A: The first time he ever came to my house was when he

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came in to see me about going to AMMCO to see about the P. R. machine. In the spring of 1936.

Q. Was that when you showed him the stoker?

A. No, I didn't have it then. I distinctly remember that I didn't have it then.

Q. Did he come to your house then when he wanted the oversized fixture?

A. That's right. He came expressly to see if I could get the oversized equipment at that time.

A. That's right. He came expressly to see if I could get the oversized equipment at that time.

Q. Did you have the stoker at that time?

A. We didn't waste any time that evening for anything.

Q. When was the next time he was in your home?

A. When he came about the P. R. pin hole boring machine.

1773 Q. When was it that you showed him the stoker, after the piston fixture incident?

A. I believe that was after the piston fixture incident.

Q. Now, when Larson came down to your basement that night, was that before or after the piston fixture incident?

A. When we talked about the wrench?

Q. That's right.

A. That was after the piston fixture incident.

Q. At the time that Larson came down there and talked to you about the wrench, please state in your own words the wrench idea that you had in mind, if you had a complete wrench idea in mind.

A. The idea I had in mind was a round beam that would bend or reflect as pressure was applied and, by measuring that deflection through an instrument or an indicator of some sort attached to the wrench, it would give a reading. I had in mind foot-pound reading to determine the pressure applied to a nut or a bolt.

Q. How was the spring bar to be attached?

A. Well, it could be pressed into a tight fit in the hole in the head member.

Q. By the head you mean the member that was to be engaged by the work?

A. That's right.

Q. Did you have any idea as to how you were going to support the other end of the spring bar?

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A. Well, I knew that it should be free to move or pivot in some way.

1774 Q. You knew that from work done on the wrenches at AMMCO?

A. Yes.

Q. Did you have any idea of how you would support it so that it would be free to pivot and slide?

A. Yes, I had in mind that it would slip through a hole in a bearing of some sort that would support it.

Q. You didn't have in mind any particular kind of bearing at that time?

A. Nothing definite.

Q. Did you know at that time what kind of gauge structure you would use?

A. I wasn't definite about gauge structure.

Q. Did you have any idea where to locate the gauge structure?

A. I had an idea of making them—on working out something in the way of a gauge.

Q. I mean as to the position on the wrench that you put it?

A. As near to the handle as you could possibly put it.

Q. Did that present any problem with respect to connecting the spring bar to the gauge?

A. No.

Q. Could you still connect it the same way that AMMCO did?

A. No, on account of theirs being connected in the center of the wrench and to put it at the end you would have to have some other means of hooking it up to get the movement.

Q. Had you worked out anything like that at the time you first told Larson about it?

1775 A. Nothing definite, although I had given some thought to it. I hadn't worked anything definite out.

Q. Had you made any sketches with respect to your idea at that time?

A. No sketches or drawings of any kind.

Q. Then you didn't show Larson, at that time, any sketches or drawings?

A. No, no sketches or drawings.

Q. At that time, did you show Larson anything?

A. Nothing other than I had a piece of drill rod and

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some sockets and I do not remember what else. I had to convey my idea to him—in applying pressure—it wasn't heat treated, but that was the thing that I was working for—that applying pressure to that would cause it to bend. I explained then that by measuring the amount that it would bend it would always be constant and that you could measure that.

Q. You didn't have a complete wrench in any sense of the word at that time?

A. Only the idea that I had something to work on.

Q. It is my understanding, from what you told me, that you did not originate at AMMCO the idea of using a straight rod and having one end fixed on to the forging or some other part of the member that engaged the nut and the other end connected to a member that swiveled in the casing, is that correct?

A. That's correct.

Q. You did not originate the idea that, in addition to swiveling, the spring bar would slide longitudinally in that swivel?

A. No, I didn't originate that.

Q. What you did originate in your own mind, after 1776 that other idea had come forward was the connecting of the one end of the spring bar directly to the head member?

A. That's right.

Q. And the use of a round spring bar and the use of a gauge located at or as near as possible to the handle so that the operator could see it easily?

A. That's correct.

Q. When did you get these last ideas that you had in your mind?

A. In 1937, while working at AMMCO.

Q. In what part of the year?

A. Possibly in September or October of 1937.

Q. After the spring-bar type of wrench had been tested?

A. After the spring bar type of wrench had been tested and approved at AMMCO.

Q. When you got these ideas, why didn't you tell Mr. Wacker about it?

A. I had no opportunity. I told Mr. Zimmerman on a number of occasions of ideas that I thought had merit. However, they were sidetracked or not used. I mentioned

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the possibility of using the round bar and fastening it directly into the head member and I was told that this was not practical and would not work. I had it explained to me briefly that the round bar would break if used in this manner.

Q. And because Mr. Zimmerman pool-pooled the idea, you didn't go further with it, is that it?

A. I still thought that the idea, if worked on, could be used. It was a matter of using the proper metal in the spring bar and the correct heat treatment of the spring bar and that it would then work out satisfactorily and could be used. I carried that idea in mind for some 1777 time and that is the idea that is now used in the tension wrench made by the Precision Instrument Company.

Q. And that is the idea that you conveyed to Larson in the basement in your home that evening?

A. That is the same idea that I discussed with Larson that night.

Q. What did he think about it?

A. He thought it was a good idea and suggested that we work together on it in his shop at the K & L Motor Company inasmuch as he had the equipment and I had none.

Q. What did you tell Larson then?

A. I agreed to work with him in my spare time—the only time that I would have inasmuch as I was working at AMICO—and he, in turn, agreed to devote his spare time at the start. This we did for a few months. By spare time I mean evenings and Sundays.

Q. And where did you do this work?

A. At the K & L Shop.

Q. When was that?

A. December, 1937 and January, 1938.

Q. What was the nature of that work?

A. He had the first patterns and secured castings and I made the machine parts necessary for use in the first wrench.

Q. How many castings were made up at that time?

A. Two castings.

Q. Why were there two?

A. One with a straight handle—just a straight round handle with no grip shape to it, and the other with a large grip for a handle.

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1778 Q. Did you have any cover plates made?

A. I believe there were two cover plates made.

Q. Did anything have to be done with the castings after they were made?

A. It was necessary to machine them and bore holes in them.

Q. You did that work, or did Larson?

A. We did that between us—making the holes in them and machining the surface so the cover would fit on the body.

Q. What machines were used for that purpose?

A. A lathe and drill press and, I believe, we bored the large hole on the pin hole boring machine, as I remember, on the first one.

Q. You did this work on machines at the K & L Shop?

A. That's right.

Q. In this first pattern, I note that it provides for a raised boss-like portion on the end of the wrench opposite the handle, why was that?

A. That was to provide additional material for bearing surface.

Q. I notice that there is a hole provided for in the end of the pattern.

A. That is referred to as a core hole.

Q. What was that for?

A. To let the boring bar through in order to bore a hole.

Q. Was that hole in the casting as made up?

A. Yes.

Q. Was it the proper size hole?

A. No, it was necessary to machine it.

Q. That is the hole that you bored out on the pin hole boring machine that Larson bought previously from AMMCO.

A. That's right.

Q. Is there anything unusual about the cover that you used with those first patterns and castings. Did the cover play any part in supporting any part of the wrench or anything?

A. The first one did, I believe. That's right, the first cover served as a support in part for the head member. The first ones were made that way.

Q. Who suggested that?

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A. I did.

Q. Do you remember why you suggested it that way to begin with?

A. That's the way the AMMCO forging was fixed in there.

Q. You are already familiar with that arrangement then?

A. That's right.

Q. After these casing castings were received and you finished them, as you have stated, what did you next do?

A. We devoted considerable time to some sort of mechanism that would measure or act as a gauge on this particular wrench, to denote the tension.

Q. Did you already have your spring bar at the time you got the castings?

A. I think Larson picked up some spring steel and it didn't work.

Q. What kind of a spring bar was that?

A. That was a round straight spring bar of ordinary spring steel.

Q. About how long was it? Was it full length up to the gauge or was it only part way, with reduced tail extension?

1780 A. It was the full length.

Q. And the end of the spring bar was to be connected to the gauge without any reduced extension on the spring bar?

A. That's right.

Q. When did you say it was that you got those first castings—about when?

A. I believe in December, 1937.

Q. How soon after you got the castings, did you make that spring bar?

A. About immediately.

Q. Who made the spring bar?

A. Larson made the first one.

Q. Did you see him make it?

A. Yes, I was there when they were made.

Q. Was it heat treated?

A. I think he took them and had them heat treated and they were found to be unsatisfactory.

Q. Well, did you put that in the castings that had been made—the spring bar that you just mentioned?

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A. The first ones weren't put in castings. They were unsatisfactory and we found that by just holding them in a vise and bending them, they would not return to their normal positions. It was then that he followed my directions and purchased Columbia Tool Steel stock—in December, 1937.

Q. You attended to the ordering of that steel from Columbia?

A. Larson did. He picked it up in person.

Q. Did he buy it?

1781 A. I believe he bought it.

Q. Was it already heat treated?

A. No, it was not. It was machined and then heat treated.

Q. Who machined them?

A. I machined them and did the rough turning and then Larson took them and had them heat treated.

Q. You took them?

A. He took them. I told him where to take them. He took them to some other place first. I think he was charged \$1.00 or \$1.50. I think there were six of them, but they were not satisfactory. At the next attempt at heat treating, he followed by instructions and took them to Lindberg.

Q. The first ones were not satisfactory?

A. They were not satisfactory. We tried one or two of those and they were satisfactory to some extent but they weren't entirely what I was working for. He didn't know what I was working for but they weren't exactly what I wanted. The next steel we used was from Ludlam Steel Co. and it was heat treated at Lindberg.

Q. Those first ones that you tried—the spring bar was long enough to extend directly to the gauge?

A. That is correct.

Q. And the next ones that you got from Ludlam and which were heat treated by Lindberg, they were also full length, extending to the gauge, is that correct?

A. They were short ones with the hole bored in the end and the reduced diameter rod which was connected to the gauge mechanism.

Q. Now, those first ones, you tried one or two of them in the wrench? What did you do in that respect?

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1782 A. We tried them to determine whether they would return to normal position after bending them or flexing them.

Q. In a wrench or vise?

A. Both, and broke one; I believe.

Q. You didn't have the cover plate on when you did that?

A. The cover plate was on it.

Q. The one that broke was in a vise? What I am getting at is did you have a gauge on it when you tested those first ones?

A. Well, we determined with an indicator (we used a dial indicator for our gauge) we had no gauge mechanism made up as yet.

Q. What do you mean a dial indicator?

A. That is the common name applied to it. Several companies manufacture them: Starrett make them and so do Brown and Sharp. There is a mechanism inside of the case.

Q. Something like you are using now?

A. Similar to it.

Q. How did you connect the spring bar to the indicator?

A. Through a hole in the casting.

Q. A lateral or longitudinal hole—crosswise of the wrench or lengthwise of the wrench?

A. Crosswise of the casing.

Q. In testing it, what did you hook the wrench to.

A. In a vise—just holding it in a vise—the very first tests.

Q. That was, then, those first castings and the first spring bars and all of this comes in December, 1937?

A. That's right.

Q. Did you watch the gauge to see whether the gauge would work?

A. To see whether it would run to zero when taking off the applied pressure. It worked fairly well although it wouldn't return to dead center each time, which meant 1783 there was a little set if great pressure was applied.

Q. Now, when you came to the spring bars that you got from Ludlam and had heat treated at Lindberg, you assembled them in the wrench?

A. Yes, two, we worked on the assembling of them.

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Q. Were they in the same castings that had previously been made?

A. No. By that time he had made new patterns and got additional castings and changed the shape of the patterns somewhat.

Q. When was that now?

A. I believe that was January, 1938—just past the Holiday Season.

Q. That was when you started using the reduced end extension to hook on to the gauge?

A. That's right.

Q. Where did you get the gauges that you used then?

A. They were hand made—we made them.

Q. Whose idea was that fork on the gauge to connect on to the spring-bar?

A. I believe that was my suggestion. I suggested it to him and we made those together.

Q. Had you ever seen anything like that before—that general idea of a fork connecting on to a pin on a gauge?

A. Well, we used that on one of the wrenches at AMMCO—quite similar to that—for fork engaging a pin.

Q. Who assembled the parts in this wrench and where was that work done—I am talking about the wrench with the steel bars that you got from Ludlam?

A. We were still working on them at the K & L Shop?

Q. Who assembled those and fixed them up?

1784 A. Larson and I did the work. He, however, did more work than I did because he had more time to devote.

Q. Did you test those—how many did you make up like that?

A. There was only one completely finished, that was finished in every respect.

Q. Did you test it?

A. Yes, we did considerable testing then.

Q. How did you test it?

A. By making a test bar out of cold rolled steel, as I remember, that was about 26 or 28" long and was pivoted at the center with a hole at each end where you could hook a rod on it and hang weights on it. We made weights out of scrap lead and each weight, with the exception of one or two, weighed ten pounds and they were made in a pan to act as a mold.

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Q. Who made them?

A. Larson and Barrgren's brother-in-law and I had a hand in making those lead weights. We made them at the K & L Shop.

Q. Now, I haven't told you anything about Larson's testimony with respect to this testing apparatus, have I?

A. Nothing whatever.

Q. Where was this testing apparatus set up?

A. The first test bar was fastened to the side of an old drill press in the K & L Shop.

Q. Was anything done to the drill press to do that—to attach it?

A. There was a hole in the casting that accommodated this bar. There was a boss and a hole through it where this bar could be bolted on it.

1785 Q. That was this 26" bar that you told me about?

A. That's right.

Q. You say the first one, was there another?

A. There was another test bar made after that. It was set up in his basement.

Q. What was that test bar like?

A. That has a name all its own—I can't think of it. The graduated beam is a standard item made by several scale companies. They're quite common on farms—a hay scale or something like that. It is a bar with a hook shape on one end and the beam of it is graduated and marked—the figures are marked on the side of the beam.

Q. You could describe it?

A. I could make a pencil sketch of it. There are two small weights and one weight is about twice the size of the other one. There is a large weight and a small weight and this weight is designed to hook over so that it can be moved along one side of the beam. The arrangement for hooking the wrench to it was done through a cantilever movement through a large iron bar that was attached with a rod to this beam scale and the beam scale was hung on a hook that was fastened to a floor joist in his basement.

Q. I haven't told you anything about Larson's testimony or anything up to this point, have I?

A. Absolutely not.

Q. I show you a photostatic copy of Larson Exhibit 35 and ask you if that is something on the order of what you have been telling me about?

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A. That's right.

1786 Q. Where was the wrench attached with respect to any numbered part on this sketch?

A. At 3.

Q. Do you know where the scale tester came from?

A. I believe he bought it at Sears Roebuck.

Q. When was that?

A. In 1938.

Q. Did you have anything to do with the purchase of it?

A. No.

Q. Did you put up any of the money?

A. No.

Q. Do you know where Larson got the money?

A. I believe he used his own.

Q. Why was it that you didn't share that expense?

A. In the purchase of any of this material, I didn't have any money to share.

Q. Do you know what happened to the scale testing device?

A. That was turned in with other equipment to the Precision Instrument Company.

Q. Do you know whether it is still there?

A. I believe it is.

Q. Do you know where those very first castings that you referred to that were made from the first patterns came from?

A. Ravenswood Foundry Company.

Q. Who paid for those?

A. Larson paid for those.

1787 Q. Did you share the expense at all?

A. No.

Q. Was there any understanding between you and Larson with respect to expense on the wrench?

A. We never mentioned that. There was no understanding or agreement to that effect.

Q. Did the fact that you contributed the idea have anything to do with that?

A. There was no understanding to that effect; however, that was in my mind, that my contribution of the idea represented my share of any expense that he might be put to in the course of experimenting.

Q. And since you had contributed the idea, these incidental items of expense—

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A. They were trivial and should have been borne by him.

Q. As between you and Larson, what was your interest in the enterprise, if any?

A. 50/50.

Q. I show you a photostatic copy of Larson Exhibit 29 and call your attention to the lower part of the sketch appearing thereon and ask you if that looks familiar to you.

A. Yes, that is the original test beam.

Q. Where was that mounted?

A. On the side of the drill press at the K & L Shop.

Q. Did anybody see it there in addition to you and Larson?

A. Any number of people saw it. Jack Kamppinen saw it and a fellow by the name of Wolf saw it. He just put it up there and left it. It wasn't there all the time.

It could be slipped off easily. It was used at the 1788 K & L Shop until we moved everything over to Larson's basement. This test beam was moved over there and it was mounted to a post or a column in his basement. That was before he got the Sears Roebuck scale.

Q. When was it moved over there?

A. Probably in March of 1938.

Q. Have you any way of fixing that date?

A. The only way of fixing that date would be that it was in close conjunction with the time that we purchased that South Bend lathe. It was closely related to that date and that date can be fixed by the date that we purchased that lathe, which can be verified by the bank because that is the date that we borrowed the \$100.00 jointly to apply on the purchase of the lathe.

Q. It was moved after the purchase of the lathe?

A. That's right.

Q. How long after that did you get the Sears Roebuck device—after the first one was moved to the Larson basement.

A. Possibly a month or six weeks.

Q. Did he get that Sears Roebuck device on time or pay cash?

A. He paid cash—he said he did.

Q. How much did he pay?

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A. I believe he said it was \$4.50.

Q. Did Sears Roebuck give a receipt?

A. They give you a cash register receipt if you purchase for cash but I, myself, and others often drop them before leaving the store, unless there is some reason to preserve them.

Q. What was done with that first testing structure after you moved it over there and you got the Sears Roebuck device?

1789 A. I believe it was kept although it was no longer used. It was kept in his basement. It could be slipped off the post and I do not think it was disposed of.

Q. Where did you get the beam that was used for that?

A. I think he picked that up from Passman Brothers on Washington Street near Union Street, Chicago.

Q. Did he build that first testing device alone or did you help him?

A. I directed what he should do and he did it.

Q. Did it test foot-pounds or what?

A. It tested in foot-pounds. It was so designed that it would test in foot-pounds with proper weights on a rod hooked onto this beam.

Q. I again show you photographs of Larson's Exhibits 6, 7, 8, 23 and 24 and ask you whether you know anything about the parts marked 23 and 24.

A. They are changed patterns that were made after his conference with the Snap-On Company. The flare was put on at their direction.

Q. Do you remember whether or not or know anything about that being a build-up from some originally made patterns?

A. It was putty or plastic wood that was added onto the other patterns that he had on hand.

Q. Do you see any patterns there from which the second casting was made?

A. That would be this pattern here (referring to 24) minus the flare on the side.

Q. You could identify all of them if you would see them?

A. Yes.

1790 Q. Did you have anything to do with the gradual change in development of those second patterns.

A. You mean, did I work on them?

Q. Yes.

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A. Larson did all of that.

Q. Did you see him work on them?

A. Very little. He did that at home in his basement when I was not with him.

Q. Do you know where those black patterns were kept after they had served their purpose?

A. They had two places where they were kept. They were kept at his home and also at the K & L Shop.

Q. Do you know where the second set of patterns were kept after they were made?

A. They were kept at his home after they were used in getting castings.

Q. How often were you at his home after you got that lathe?

A. I was there quite frequently after we got the lathe.

Q. How many times a week?

A. Almost every evening—three to five a week and Sundays.

Q. How long would you be there?

A. It varied—from three to five hours in an evening and usually all day Sunday.

Q. Before you moved everything over to his basement, how often did you go down to the K & L Shop and work with him?

A. The work at the K & L Shop was done evenings and Sundays.

Q. How many times a week?

A. Four or five and every Sunday while we were 1791 working at the K & L Shop.

Q. Was anyone else around there those evenings at the K & L Shop?

A. Occasionally someone would drop in to talk.

Q. How about Mr. Kamppinen?

A. He was never there.

Q. How about after you moved everything over to Larson's home, did anyone stop in then?

A. Various visitors would stop in, but Jack Kamppinen never came there.

Q. Do you remember the names of any of them?

A. Ford, Dawson and Stone.

Q. Who was Stone?

A. He is a manufacturer's representative, too. He was

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seriously considering the distribution work. He can verify anything I say.

Q. Did anyone else drop in when you were there?

A. I think my brother has been in that basement too—John Thomasma.

Q. How about Whittaker—Larson's brother-in-law?

A. I am sure I have seen him in Larson's home, but to be positive about seeing him in the basement, I am not sure.

Q. How about Hymes?

A. I can't place him in the picture. If I saw him I would know whether or not he was there. I can't place the name of Hymes.

Q. Who was Ford?

A. Ford is the friend of Larson's who works for 1792 the fire department in Evanston.

Q. What do you know about Barrgren?

A. Barrgren, when I first met him, was associated with the Emsco Brake Lining Co.

Q. How did you happen to meet him?

A. He called at the K & L Shop and sold brake linings to the boys there.

Q. Was that after your working hours or how did you happen to meet him there?

A. I was there on my own time when I was associated with Larson working on the tension wrench.

Q. About when was that?

A. I believe I met him in January 1938.

Q. In the evening?

A. Early evening, yes.

Q. Was he shown the wrench?

A. He was shown the wrench at one of these meetings and displayed an interest in the wrench and we talked about the possibility of his distributing the wrench.

Q. Did he make any attempts in that respect?

A. To my knowledge he made no attempts in the distribution of the wrench. He merely talked about it but never did anything about it as far as distributing, selling or trying to sell the wrench.

Q. Do you have any recollection of him going to some motor mart in Des Plaines where his brother worked?

A. No, I do not know anything about that. He was put off promptly because he didn't have any money.

(Notarial Seal) 11-15-40 G. B. T.

1793 Q. Why didn't you do any dealing with him?

A. He was financially unable to handle the matter.

Q. Do you know whether he ever bought a wrench?

A. Never to my knowledge. If he did it was between Larson and Barrgren and I never learned of it.

Q. Did you have any wrenches to sell or to give salesmen to try to sell.

A. No, we did not. We only had one wrench.

Q. How many times did you see Barrgren?

A. I don't know actually how many times; I did see him on several occasions.

Q. Did you ever see the wrench demonstrated to him?

A. Yes, we demonstrated the purpose of the wrench.

Q. Did you demonstrate it at any time on that testing beam that you had at the K & L?

A. Yes.

Q. When was that?

A. That was during January of 1938.

Q. How do you fix that time?

A. Well, it stands out in my mind. It was shortly after the Holiday Season, and I am quite sure it was in January.

Q. Shortly after you had gotten together with Larson?

A. That's right.

Q. What do you know about this man Dawson?

A. He entered the picture considerably later than that.

Q. You don't know, then, whether Barrgren made any effort to sell the wrench.

A. If he did, I don't know about it.

1794 Q. Would you have known about it?

A. If it were discussed in my presence. It could have been discussed during my absence.

Q. When was the first time that you know of that you made an attempt to sell the wrench?

A. The first was our discussion with Barrgren and nothing was done with him, to my knowledge, and Larson and I then went to the offices of Clark.

Q. You can identify Clark?

A. I would recognize him if I met him. His place of business was on Indiana Avenue, south of 22nd Street.

Q. Did his business have a name of some kind?

A. I am not sure whether he operated under the name of Clark Tool Company or not—I am not sure.

(Notarial Seal)

11-15-40

G. B. T.

Q. What kind of business did he have?

A. He dealt exclusively with distribution of wrenches of all sorts used in the automotive repair business.

Q. What were your connections or attempts with respect to Clark?

A. We spent possibly two or three hours as to the possibility of his distributing the wrench, explaining the possibilities it had and that we wanted to manufacture it and have someone distribute it.

Q. What was the outcome of that?

A. There was nothing definite at that meeting other than that he was quite enthused over the wrench and thought that he could distribute large quantities throughout the country.

Q. Was there more than one meeting with him?

A. That was the only one at which I was present. I believe Larson saw him once or twice after that.

1795 Q. Did he make an attempt to distribute?

A. No, he never had the samples or anything to work with to distribute them.

Q. Why not?

A. He was also financially unable to handle the distribution problem.

Q. When was that?

A. The time of the meeting of Larson, Clark and I.

Q. Yes, when was it?

A. I believe it was about the latter part of January, 1938.

Q. What wrench did you have available at that time to demonstrate?

A. I believe it would be this one (referring to Exhibits 13 and 14).

Q. That was the second batch of wrenches made up and there was only one wrench—you only had one sample when you talked to Barrgren and Clark?

A. That's correct.

Q. After the Clark meeting fell through, did you try to get anyone else interested?

A. Larson then contacted Dawson for the purpose of distribution.

Q. Do you remember Dawson's first name?

A. I believe it is Edward.

(Notarial Seal)

11-15-40

G. B. T.

Q. What was his business?

A. He was distributing automotive wrenches to the various garages.

Q. Was he a machinery manufacturer's agent?

A. Distributor—manufacturer's distributor or representative. He represented the Plumb Tool Company.

Q. Did he have his own business name?

1796 A. His business name was the Tool Supply Company.

Q. Do you know where that was located?

A. He operated from his own home on Windsor, a little west of Milwaukee Avenue.

Q. When was it that Larson contacted Dawson?

A. I believe that was in March of 1938.

Q. Were you along when he contacted him?

A. No, not at his first meeting. I was not present then.

Q. Do you know how many meetings they might have had.

A. I don't know.

Q. Why were you not present?

A. I don't know of any particular reason other than I just wasn't there.

Q. Were you engaged at AMMCO?

A. Unless it was done when I was at AMMCO during the day, when they first got together.

Q. You were at AMMCO in February of 1938?

A. That's right.

Q. What was the reason of getting together with Dawson?

A. He agreed to take one or two wrenches on trial to see whether or not he could sell them and he eventually sold a total of eight wrenches.

Q. What was the arrangement with Dawson?

A. He purchased them as he wanted them for cash or C.O.D.—list price, less 50%.

Q. Do you know any of the people to whom Dawson sold wrenches?

A. I believe the only one that I know was some garage or mechanic in Evanston. The exact location I don't know.

Q. Do you know his name?

A. I don't.

(Notarial Seal)

11-15-40

G. B. T.

Q. Where did you get that information?

A. In a discussion that occurred between Larson, Dawson and I.

Q. Over what period of time did Dawson sell those wrenches?

A. Over a period of about two months—a total of two months.

Q. That would be through the spring of 1938?

A. That's right.

Q. Where did the wrenches come from that were sold to Dawson for resale?

A. They were made in the basement of Larson's home in Des Plaines.

Q. Who made them?

A. Larson and I made them together. He did most of the work inasmuch as he had more time.

Q. Where did the profit from those wrenches go?

A. Larson received the payment for the wrenches. I never handled or received any of the money at any time.

Q. Why was that?

A. Well, the checks were made out in Larson's name.

Q. Shouldn't he have split some of that money with you?

A. There was no understanding to that effect and I didn't mention the splitting of any of that money inasmuch as all of the money that had been paid out for materials, castings and metal was advanced by him.

Q. Why wasn't there any split of the money received for the wrenches?

A. Well, the money received represented less than 170¢ enough to cover the cost of making the wrenches.

Larson had paid out the money for the materials used and this money that was received was used to cover the material expense, except for metal boxes.

Q. Where did you get the materials for those wrenches? Those that were made for Dawson.

A. The castings were made by the Ravenswood Foundry and the steel came from Ludlum and the Steel Sales Corporation.

Q. What is the Steel Sales Corporation?

A. They supplied the steel for the chrome-vanadium head.

(Notarial Seal)

11-15-40

G. B. T.

Q. Where are they located?

A. At that time at Jefferson and Monroe Streets, Chicago, but I understand that they are now at their plant in the central manufacturing district in Chicago.

Q. Where did the gauge structure come from?

A. The first gauge structure came from various odds and ends assembled out of parts that he got from gears and pinions from the Boston Gear Company, that is for the very first wrench. Succeeding gears and pinions were secured by Larson from the Wetzig Manufacturing Company—for the ones that Dawson sold.

Q. Who handled the securing of the castings of the wrenches that Dawson got?

A. Larson.

Q. What part did you play, if any, in the manufacture of those wrenches.

A. Assisting in general machining of the wrenches and the assembling and finishing.

1799 Q. Did those wrenches differ any from the first ones?

A. Yes, somewhat—a slight change in the handle of the wrench.

Q. Any other change?

A. One particular change was that dials had been secured from the Chicago Thrift Company, to make them present a finished appearance.

Q. Metal dials?

A. Yes.

Q. What kind of dials were on the first wrenches?

A. On the very first wrench there was a cardboard or pressed paper dial.

Q. Who made that?

A. I made the first one.

Q. Did anyone see you do that?

A. No one outside of Larson saw me make the first one.

Q. What was the dial on the second wrench made of?

A. That was made by the Chicago Thrift Company and patterned after the design of this first one that I made.

Q. There was only one that had the pressed paper dial?

A. That's right.

Q. Any other difference between the wrenches that Dawson got and those previous wrenches?

(Notarial Seal)

11-15-40

G. B. T.

A. The very first wrench had a somewhat different dial mechanism than the ones that Dawson got.

Q. Do you see any wrench on these photographs like the one Dawson got. (Referring to Larson Exhibit 19.)

1800 A. The casing and cover plate were so arranged so that the cover plate no longer served as a bearing and that was done to improve the appearance of the wrench.

~~Q. Did it have anything to do with the operation of the wrench?~~

A. It had no material change in its operation.

Q. How do you identify Exhibit 19 as the wrench that Dawson got?

A. Well I remember distinctly that this particular design was the one used at that time and distributed by him and I believe that if the one he sold in Evanston could be located, it would be a duplicate of this one that is Exhibit 19.

Q. How about these wrenches Exhibits 31 and 37, how do they compare with the wrenches sold by Dawson?

A. I do not believe that the ones distributed by Dawson looked like that; they didn't have this bead at the handle—that bead was omitted and this style was used.

Q. After looking at this photograph, do you want to revise your previous statement respecting the wrenches that Dawson sold?

A. Yes, I believe it was 17 rather than 19 (referring to Exhibits).

Q. What was the difference between 17 and 19 that you identify?

A. This bead at the handle—that is quite prominent.

Q. What kind of aluminum alloy were those casings made from?

A. A durable aluminum alloy that would have the utmost strength in the casting form.

Q. What about the aluminum in the original casting—is there anything unusual about it?

A. Nothing that stands out in my mind.

1801 Q. Where did the metal come from?

A. It was supplied by the Ravenwood Foundry, I believe.

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Q. Do you have any recollection about Larson gathering up old pistons for the purpose of having castings made?

A. I do not know anything about that.

Q. Would you have likely known about it if he had done so?

A. If he had mentioned the fact to me, but I don't recall any discussion of that nature.

Q. Did you and Larson discuss the material to be used in the castings?

A. Yes, we discussed the fact that we wanted good aluminum castings with an alloy that would render them as strong as possible.

Q. Had you had any experience prior to that time?

A. I had considerable experience with aluminum castings at AMMCO.

Q. Now these wrenches that were sold by Dawson, were the castings ordered for them all at the same time?

A. Yes, I believe so.

Q. How many castings did it take?

A. I believe a dozen of them.

Q. How long after you got the castings was it before you had the wrenches completed?

A. Possibly two or three weeks.

Q. When was that?

A. In March or April of 1938.

1802 Q. Did Dawson sell all these wrenches before, or part of them before and part of them after the Snap-On contact?

A. All before the Snap-On contact.

Q. What was the name of the man at Snap-On that was a relative of Larson's?

A. William Sharon. He was in the office up there.

Q. He is a brother-in-law of Larson's?

A. I do not know the exact relationship—whether a brother-in-law or a cousin, or what.

Q. It was through him that Larson made his contact with Snap-On?

A. Sharon introduced him, I believe, to Johnson at Snap-On. I was not present at that meeting.

Q. After Dawson sold a few wrenches, did he contact anyone else in an attempt to sell wrenches?

(Notarial Seal)

11-15-40

G. B. T.

A. Yes, an attempt was made by Larson to have the Federal Mogul Bearing Company of Detroit distribute the wrenches. They have a branch office in Chicago, although their main office is in Detroit.

Q. Who is the man that they contacted there?

A. I do not know his name in Chicago or elsewhere.

Q. What became of that?

A. Larson received a letter from him saying that they were not interested in the distribution of a wrench.

Q. Did you contact them at all with Larson?

A. No, I had nothing to do with that.

Q. Why was that?

A. That was done during the day and I was engaged in my work at AMMCO and was not free.

1803 Q. Was any other attempt made to interest anyone in the wrench?

A. Not to my knowledge. Oh, yes, a party by the name of Stone—somewhere near Irving Park.

Q. What kind of business was he in?

A. He was a manufacturer's agent.

Q. Where were his offices?

A. At his home.

Q. Any idea of his first name?

A. I think I can get that from a jobber that knows him. I will try to get it.

Q. What kind of business was it?

A. Principally the distribution of Thexton piston expanders.

Q. What were the dealings with Stone?

A. Larson was confident that he could interest him and that he would be of value to us in the distribution inasmuch as he was financially able to handle something of that kind.

Q. Did you talk to Stone too?

A. Yes, I talked to him in our discussions.

Q. Did you show him anything?

A. I showed him the tension wrench in Larson's basement.

Q. What kind was that?

A. One just like those distributed by Dawson.

Q. Did you contact Stone before or after Dawson?

A. After meeting Dawson.

Q. Did you contact him during the time Dawson was selling?

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A. During the time Dawson was selling—we were playing both parties.

1804 Q. Did you sell a wrench to Stone?

A. No. Stone never purchased one or took a sample or made any attempt to sell or distribute them to my knowledge.

Q. Did the deal fall through?

A. Nothing ever came of it.

Q. Now those wrenches sold by Dawson. Did they bear any marking of any kind.

A. The wrenches sold to Dawson were marked with a serial number in code.

Q. What was that code.

A. The one used by a concern I was formerly connected with, namely, the Chicago Machinery Exchange.

Q. The very first wrench that you made and sold to Dawson, did that have a marking "FOF" so that it would be No. 101, so that "FOG" was the 6th wrench that you sold to Dawson?

A. That's right.

Q. "FOU" was the seventh wrench?

A. That's right.

Q. And "FOX" was the ninth wrench?

A. That's right.

Q. How about the wrench that Larson sold to Landerdorf. How did it compare with the wrenches that were sold to Dawson?

A. I believe it was the same in every respect.

Q. Part of the same batch or a different batch?

A. From the same batch of castings.

Q. Did it have a code marking?

A. I believe it did. If it didn't, it should have had.

Q. What was the purpose of that code marking on the wrenches?

1085 A. To identify them in serial number form. The code marking represents serial numbers.

Q. Why did you want to do that?

A. So that we could always keep a record of the wrenches that we sold when they were made, when they were shipped and to whom they were shipped.

Q. For repair and replacement purposes?

A. And to give us a definite idea how long they were out in the field.

(Notarial Seal)

11-15-40

G. B. T.

Q. I haven't previously told you anything about Larson's testimony?

A. Not a word.

Q. And the information you have just given me is entirely voluntary?

A. That's right.

Q. Why did Dawson quit selling?

A. Well, he had sold all that he thought he could sell in his territory and to reach out farther in the field would require the spending of money on one form or another, either in advertising or in sending someone out to sell them or to try to sell them.

Q. Where does Snap-On enter the picture?

A. Well, when the letter was received by Larson from the Federal Mogul Company informing him that they were not interested in distributing a wrench of that type, Larson then contacted the Snap-On Company through his relative who was with that company.

Q. The contact of Larson with Snap-On was, I understand, entirely his own idea.

A. That's right.

Q. Did you have any ideas about not contacting or contacting Snap-On?

A. No, in fact I was not in favor of contacting Snap-On until we had consulted a patent attorney and first 1806 determine whether or not we were on solid ground.

Q. Did you suggest such a thing?

A. Yes, I suggested it and was very much in favor of doing it; however it was merely talked about and postponed.

Q. Did Larson agree to it?

A. Larson was in agreement with it and he could appreciate what I had in mind; that it was to protect our interests and to know just what our position was to manufacture and supply the wrenches to anyone that might want to distribute them in large quantities.

Q. Why didn't you do it then?

A. Well, there are two definite reasons. One was that we weren't financially able to pay the cost of such a thing and we were so deeply absorbed in making a few and working on them that it was just postponed and postponed.

Q. Who did you have in mind contacting for that advice?

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A. The man that I suggested was Joshua Potts of Chicago.

Q. Did you ever contact a patent attorney for advice?

A. No, we never did.

Q. Did Larson ever contact an attorney for advice that you know of?

A. Not to my knowledge.

Q. You mean that nothing like that was done, then, prior to the time you contacted Snap-On?

A. That's right.

Q. Was there any change in Larson's attitude in that connection, after contacting Snap-On and, if so, what was it?

A. After his first interview with Snap-On, it was then arranged that they would consult their patent attorney inasmuch as he told them, I believe, that he didn't 1807 have the money to engage a patent attorney.

Q. Whose patent attorney?

A. Any patent attorney. I mean that he had told Snap-On that he could not afford to engage a patent attorney and then Snap-On arranged a meeting with the Snap-On patent attorney, who is Harry Alberts in Chicago.

Q. You were advised of that by whom?

A. By Larson.

Q. What was the purpose of Larson seeing Alberts?

A. To determine whether or not the tension wrench was patentable and would not conflict with any other existing tension wrenches; of which there were a number in existence.

Q. Was an investigation made?

A. I believe an investigation was made by the Snap-On attorney.

Q. Alberts?

A. Yes—at least I am of that impression.

Q. Were you ever told of the outcome of the investigation?

A. Briefly, the only definite information I received was that the patent application to be made on that tension wrench was for an improvement of the tension wrench. There was some discussion about the difference between the application for a basic patent and an improvement of a tension wrench.

(Notarial Seal)

11-15-40

G. B. T.

A. That's right.

Q. What was that improvement?

A. Well, I never saw any of the written details on it.

Q. Was it the tail piece or reduced end extension on the spring bar?

1808 A. Yes. The manner in which the dial reading was taken on the spring bar.

Q. Who told you about that?

A. Larson.

Q. You never saw the application?

A. I never saw any written details concerning the application.

Q. How did Larson happen to tell you about it?

A. When we discussed the matter after his meeting with Alberts, I was interested to know whether or not it was O. K. to go ahead and manufacture the wrench and he was sure that Alberts had approved it and said that it was O. K., and he felt that, he being in the business and had many years' experience, was correct and accepted it as that.

Q. Who paid for the preparation and filing of that application?

A. At that time there was no payment made by anyone that I know of, unless the Snap-On Company paid for it.

Q. That particular improvement that was covered by the application, whose improvement was that? Who made the suggestion respecting the reduced end piece connecting with the gauge?

A. Larson made that.

Q. Therefore, it was proper for the application to be filed in his name?

A. That's right.

Q. Suppose that the application was to have covered just the idea of the head-piece and the straight spring bar, one end fixed to the head-piece and the other end connected to the casing by a swivel in which the spring bar would slide, in whose name should such an application be that have been filed?

1809 A. Really, that should have been filed in my name.

Q. It is because of the end of the spring bar being fitted directly into the head member?

A. That was my idea.

(Notarial Seal)

P1-15-40

G. B. T.

Q. Suppose that application had covered merely the idea of a rotatable head member in the casing and a spring bar connected at one end to that head member in some way through a forging or any other way, broadly, with a swivel at the other end and the spring bar sliding in it, in whose name should that application be filed?

A. That, in my opinion, would be the property of the Automotive Maintenance Machinery Co., and Zimmerman, as engineer, would be the inventor of the same.

Q. Then, in your mind, it was perfectly proper for Larson to file the application in his name if he limited it to that improvement that they had decided was patentable?

A. That's right.

Q. I call your attention to the casting and cover Exhibits 9 and 10 and ask you whether you know anything about them.

A. Well, 9 and 10 appear to me to be the very first castings made from the very first pattern made.

Q. The patterns, Exhibits 6, 7 and 8?

A. That's right.

Q. When were they made?

A. The last week in November, I believe, in 1937.

Q. In any event, after that oversized piston fixture was bought?

A. That's right.

1810 Q. Now, I call your attention to the casing, Larson Exhibit 11, and the cover, Exhibit 12. Did you ever see them before?

A. Yes, they are also from the very first castings made. No. 11 represents what is left of the body of the casting made from pattern No. 6, with the rest of the handle having been broken off.

Q. Do you know anything about that handle being broken off?

A. I didn't see it happen but I understand the casting was thrown on the floor deliberately to see whether or not it would break from misuse or rough treatment.

Q. Why was such a test as that made?

A. Purely out of curiosity to determine whether or not it would hold up—by holding it up in mid-air and then dropping it on the cement floor to see if it would break.

Q. Does Sturtevant of Gen Ellyn enter that picture anywhere?

(Notarial Seal)

11-15-40

G. B. T.

A. That was how the dropping of the wrench happened. Larson had been with me in Sturtevant's plant. Sturtevant was demonstrating his torque wrench and telling how he would hold his wrench and a competitor's wrench side by side in mid-air and his sales talk to his prospect was that if he would let go of both wrenches, after they hit the floor, which one the prospect would want to pick up — merely to convey the impression of the stability and strength of his torque wrench.

Q. And Larson was trying to make some of the same tests with this wrench?

A. It was a re-enactment of this same thing that Larson was doing when he broke that wrench.

Q. Did you see that done?

A. No I didn't.

1811 Q. How did you learn about it?

A. I learned of it when he told me about it the evening of that day when he went through that procedure, or the following day.

Q. You saw the broken wrench?

A. Yes.

Q. Did you ask him about it?

A. He volunteered the information and told me about it.

Q. Did you have any more castings available after you broke that one.

A. No, not of that pattern, because that pattern was then in the discard, so far as usage was concerned. We were already using the other pattern that he made.

Q. Do you know anything about the fixing of a file on the casting of Exhibit 9?

A. Using it as a file holder, yes. That is still in existence. He used a sharp file and bolted it to the casting and used that casting as a handle or a holder to file other wrench castings.

Q. Why did you want to file other castings?

A. To smooth their surface and get the sand marks off.

Q. Where was that file kept?

A. Among the tools at the K & L Shop, and from there it was moved to Larson's basement.

Q. Do you know anything about the wrench castings, Exhibits 13 and 14?

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1812 A. 13 and 14 are identical, except 14 has a number of drill point marks on the grip in the handle to determine whether that would make a more desirable handle to hold in the hand.

Q. Who suggested that?

A. I am not sure who suggested that?

Q. Did Ford suggest it?

A. I don't remember.

Q. Barrgren?

A. I don't think he had anything to do with it.

Q. You didn't, did you?

A. No, the minute I saw it, it didn't appeal to me in appearance, I saw that particular handle after it was finished that way.

Q. I am referring to the wrench of Exhibit 13; did you ever see that before?

A. I believe that is the one that we first showed to Clark on Indiana Avenue in assembled form in January or February of 1938.

Q. Do you know anything about the wrench of Exhibits 15 and 16?

A. That is the same as 14, except for the marking on the handle—the drill point marks.

Q. Do you know anything about the making of that?

A. That was made at the same time as No. 13.

Q. Did you help make it?

A. I did.

Q. That was in the early part of 1938?

A. In January of 1938.

Q. Do you know anything about these spring bars, Exhibits 40, 39, 41 and 28?

1813 A. Yes, they represent the first spring bars that we used and No. 28 would be the one that was used in the casing No. 13 that was shown to Clark.

Q. When were they made?

A. They were made in January of 1938.

Q. How about the bar 40 which is broken off at one end?

A. Yes, that was also probably assembled into No. 13 and was broken and then removed and replaced with No. 28.

Q. Did you ever see it before that you remember?

A. I saw it at the K & L Shop.

(Notarial Seal)

11-15-40

G. B. T.

Q. How about at Larson's basement?

A. Yes, he had it there.

Q. How about No. 39; did you ever see that before?

A. Yes, that was turned down on the end and whether it was ever used in a wrench or not, I am not certain.

Q. You don't remember seeing that before?

A. I remember seeing it.

Q. Did you have anything to do with the making of it?

A. I think I turned the O.D. on it but whether it was ever assembled to be used, I am not sure.

Q. When was that?

A. In January, 1938.

Q. Did you ever see Exhibit 41 before?

A. That represents one of the first spring bars made.

Q. Anything peculiar about it?

A. The end is turned down and there was another piece slipped on the other end of it.

1814 Q. Did you have anything to do with that?

A. Larson made that.

Q. When was that?

A. January, 1938.

Q. Do you know anything about Exhibit 28?

A. Yes, that was adapted with a hole bored in the end and the extension pressed into it.

Q. Did you have anything to do with that one?

A. I believe I turned the O.D. (outside diameter) on the spring and put the hole in it.

Q. When was that?

A. I believe that was in January, 1938.

Q. In any event, all of this occurred in January 1938 and subsequent to the time that the piston fixture was bought?

A. That's right.

Q. Now look at the gauge device, parts of which are shown on the photograph in front of you, and see if you recognize anything about any of them.

A. No. 46 was first used or applied to casting No. 13, I believe.

Q. Who made it?

A. Larson made it in January, 1938.

Q. How about the others?

A. 28A and 32 were made probably early in March of 1938 by Larson. I did some hand work on them.

(Notarial Seal) 11-15-40 G. B. T.

Q. Do you see any others that you are familiar with?

A. 43 is almost identical with 33. 44 represents a change in the T-shaped plate.

1815 Q. Did you have anything to do with 43 or 44?

A. Yes, we worked together on those.

Q. When were they made?

A. I believe in March of 1938.

Q. How about the casing ring that was knurled and used on those gauges?

A. First they were made of brass tubing.

Q. Who made them?

A. I made some and Larson made some on the lathe in his basement.

Q. How about Exhibit 33?

A. That represents the finished part made by the Wetzig Manufacturing Co.

Q. Did you have anything to do with the designing of it?

A. Yes, I worked with Larson on the design of that.

Q. Did you first meet Carlson, who is now one of the officers of Precision?

A. The occasion on which I first met him?

Q. Yes.

A. The first time I ever met him was in my brother-in-law's tavern on the outskirts of Des Plaines.

Q. When was that?

A. I can't fix a date right at this moment.

Q. Do you know how Carlson happened to meet Larson?

A. Yes, I introduced Carlson to Larson.

Q. When was that?

A. I believe in November of 1938.

Q. How did that come about—what were the circumstances?

1816 A. We were leading up to the manufacture of wrenches for the Snap On Company and needed capital for the purchase of material and Larson had failed in raising money to proceed with and I had no money available and Larson felt that I should mortgage my home to raise sufficient money to finance the manufacture and he located a man with money to loan who would loan money to me on my home on a first mortgage arrangement. All this he arranged on his own accord and the first that I

(Notarial Seal)

11-15-40

G. B. T.

knew of it—or what had really transpired—was when this man and his wife called at my home to look the home over to determine whether or not he could loan the money on a mortgage.

Q. You refused to go through with any such thing?

A. He advised against borrowing money on the home for a business venture.

Q. Then what happened?

A. Several attempts were made by Larson to secure money for the purpose and he was unable to accomplish anything that we then, that is, Mrs. Thomasma interested Mr. Carlson in the possibility of a corporation setup.

Q. And as a result of that?

A. As a result of that, I then introduced Larson to Carlson in November and the three of us discussed setting up a corporation to manufacture tension wrenches.

Q. The patent application had already been filed at that time?

A. Yes.

1817 Q. Larson's personal contract with Snap-On had also been signed?

A. That's right.

Q. Are you sure that that personal contract of Larson's was eventually assigned to the company?

A. I don't know.

Q. You don't know?

A. There was a contract arranged then, but I was not present. Carlson and Larson went to the Snap-On offices in Kenosha and sat in conference with the officers and arranged for a contract.

Q. Would that assignment show in the books of the minutes of the company?

A. There were few minutes in the book until my lawyer came along.

Q. Is there any way we can determine that fact definitely?

A. Only through his testimony.

Q. You have not participated in any of the regular business of the Precision Instrument Company since it was organized.

A. No, except to appear at the stockholders' meetings and to sign such papers as absolutely necessary.

Q. What papers have you signed?

(Notarial Seal) 11-15-40 G. B. T.

A. The corporation papers for the purpose of incorporation and some papers demanded by the bank. They stalled that off for a long time but I believe there was an understanding. The bank demanded signatures and counter-signatures. For a long time no one but Carlson signed checks and I think the only way he stalled them off for my signature was by saying that I was absent and that he couldn't contact me. That can be checked by the 1818 Bank officials.

Q. That can be checked by the bank officials to see whether that is the fact?

A. It was quite a late date—I can't just say. I believe it was sometime during the winter of 1939 (late) that he trailed me at the house and I was not at home and then I think he left the papers at my house for me to sign and return to him in connection with this signature and counter-signature arrangement at the bank.

Q. Do you know why you were kept out of the picture at Precision?

A. Well, the reason that they gave me and the reason they gave to the stockholders at the meeting of July 31, 1940 was that my presence in the shop or the plant would put the company in a precarious position in relation to the existing patent situation and, also, there was the understanding with the Snap-On Company that I, as an employee or ex-employee of one of their competitors, would also put them in a precarious position and hurt the company.

Q. The reason, of course, that you got the same number of shares of stock as Larson got originally, even though he put in the patent application, was because of your prior arrangement with Larson with respect to the wrench?

A. And also Carlson's sentiment that we should share alike inasmuch as we started the project together.

Q. Carlson was in full accord of your shares being alike and it was to their interest to keep you satisfied in that respect?

A. Yes.

Q. Otherwise, you might go back to Automotive with the matter?

A. They might have sensed that or suspected it.

1819 Q. Did you ever have any idea about taking this idea to Automotive while working with Larson?

(Notarial Seal)

11-15-40

G. B. T.

A. I did suggest it to Larson one time that he might succeed in interesting Mr. Wacker if he took it to him as an outsider and would have more success with Mr. Wacker than I would have.

Q. That was not done with any thought of misleading Mr. Wacker, was it?

A. No.

Q. It was only with the thought that you would get an audience with him more readily and without embarrassment, than if you were to do it yourself?

A. That's right.

Q. You also hoped, I understand, that, since you thought you had a very fine idea, that maybe Mr. Wacker would think it was a better wrench than his and that you might be able to make some kind of a deal with him?

A. That's right.

Q. There are several of the foregoing facts that Mrs. Thomasma can substantiate?

A. That's right.

Q. For example, the meeting of Larson and Carlson?

A. The arrangement of the meeting of Larson and Carlson.

Q. And there are certain things that your brother can substantiate, for example, the drawing and your own work on the wrench?

A. That's right.

Q. Mrs. Thomasma can substantiate that you 1820 were away from home a lot and what you were doing?

A. That's right.

Q. Now, all of this information has been given to me voluntarily?

A. Of my own accord, that's right.

Q. And information that you have given about details of the wrench has been given out voluntarily on your part—through questioning to determine, first, whether or not you know the facts?

A. That's correct.

Q. You have given me all of this information with the thought of testifying on behalf of the party Zimmerman in this interference?

A. That's correct.

Q. And you have given all of this information without

(Notarial Seal)

11-15-40

G. B. T.

any hope of reward or remuneration or personal gain now or at any time in the future?

A. That's right.

Q. I understand that your feeling in the matter is that if you do not tell the true situation you may thereby harm Mr. Fred G. Wacker, who is the head of AMMCO and a personal friend of yours, when you have no intention to and never have had any intention to injure Mr. Wacker or his company in any way?

A. That's right.

1821 I further depose and voluntarily say that at 10:00 o'clock of the morning of November 12, 1940, Walter Carlson, Secretary and Treasurer of Precision Instrument Manufacturing Company, called me, saying that he and Larson wanted to see me around noon. I arranged to meet them at that time. Upon meeting them, we went to the Hack Machine Co. at 1228 Harding Avenue in Des Plaines. We sat in Larson's car and the following discussion was had.

They first suggested that my attorney had sold out to Automotive Maintenance Machinery Co., the owner of the Zimmerman application in the interference, as Harry C. Alberts, Larson's attorney, had written them (Larson & Carlson) a letter. They then produced the letter and I read it. The letter stated in effect that the writer, Alberts, had received a telephone call suggesting that their testimony given in the interference was false, that Alberts wanted an explanation as to whether it was or not, and if an explanation was not had he would have to drop from the case. It was further stated in the letter that my attorney had suggested that I had been interested in the invention and development of the torque measuring wrench manufactured by the Precision Instrument Manufacturing Company and Alberts again asked for an explanation. The letter concluded by stating that Alberts is now in the East and would be back Friday.

Carlson and Larson then attempted to secure my consent in that I would sign a statement to the effect that I had nothing to do with the invention and development of the torque measuring wrench of the Precision Instrument Manufacturing Company. They explained to me that if I did not, they might just as well give up and sell out to Snap-On. I told them that I would not do any

(Notarial Seal) 11-15-40. G. B. T.

think like that and that many people could swear that I had been instrumental in the invention and development of the torque measuring wrench manufactured by the Precision Instrument Manufacturing Company. Larson inquired as to who these people were. I then mentioned a few names but Larson said they wouldn't talk. After I had mentioned Dawson's name, Carlson said I should not worry about him as he had been taken care of.

Before leaving me, Larson and Carlson said they will call a Director's Meeting and then advised me that they would send me a written notice of it. They further suggested that if I did not sign the statement that I had nothing to do with the invention and development of the torque measuring wrench manufactured by Precision Instrument Manufacturing Company, that the only thing they could do was to have a stockholders' meeting, give the story to the stockholders, and advise them to sell out to Snap-On.

My reaction in regard to the conduct of Carlson and Larson was that they were very definitely scared regarding the possible consequences that might result from their past conduct.

George B. Thomasma.

Subscribed and sworn to before me this 15th day of November, 1940.

(Seal)

Thos. Marsicano,
Notary Public.

1	2	3	4
1	2	3	4
1	2	3	4
1	2	3	4

King & B. Thomas
P.B. Miller, Nov. 5, 1940.

King

FILED

AUTOMOTIVE MAINT. ACTION (G.E.)
 1935
 1935-1936 (1935-1936) 1935, 1936, 1937, 1938
 1939 ACTION NO. 1939
 1939, 1940 NO. 1939

1826

DEFENDANTS' EXHIBIT NO. 26.

(Filed Aug. 13, 1943: Roy H. Johnson, Clerk.)

647.85
75.90
154.70
148.80
177.90
176.70
167.85
168.85
117.90
118.90
118.90
121.90
119.85
131.90
245.75
179.90
293.95
276.85
317.65
376.80
378.85
186.70

4,704.35

1827 (Letterheads of John A. Wise & Son, Chicago, Ill.)

August 17th, 1940.

Services up to & Including 8/17/30	90.00
Expense & Prefex up to & Including 8/17/40	557.85

	647.85
Acknow by Cash	500.00

\$147.85

O. K.
R. E. F.
8/19/40.

1016

Defendants' Exhibit No. 26.

1828

Automotive

August 10th, 1940.

Services up to & Including 8/10/40, 4 days 60.00

Expense up to & Including 8/10/40—Pretex—

Transportation to & From Des Plaines 15.90

75.90

O. K.

R. E. F.

8/13/40

1829

August 31st, 1940.

Services up to & Including 8/31/40 90.00

Expenses up to & Including 8/31/40 64.70

\$154.70

Accounts Payable

1830

August 24th, 1940.

Services up to & Including 8/24/40 90.00

Expenses up to & Including 8/24/40 58.80

148.80

Accounts Payable

1831

Automotive

Sept. 7th, 1940.

Services up to & Including 9/7/40 90.00

Necessary expense & Pretex to & Including 9/7/40 87.90

\$177.90

J. A. W.

1832

Automotive

Sept. 14th, 1940.

Services up to & Including 9/14/40 90.00

Expenses up to & Including 9/14/40 Including all
hotel—Meals—Transportation & Pretex both
in Chicago & Des Plaines 86.70

\$176.70

J. A. W.

1833

Automotive

Sept. 21st, 1940.

Services up to & Including 9/21/40	90.00
Expenses up to & Including 9/21/40 including all expense at Des Plaines—Chicago & Pretex	77.85
	<hr/>
	167.85

J. A. W.

1834

Automotive

Sept. 28th, 1940.

Services up to & Including 9/25/40	\$90.00
Expenses & Pretex up to & Including 9/25/40— no charge made for my services and that of fill in men & women to carry in pretex	78.85
	<hr/>
	168.85

J. A. W.

1835

Automotive

Oct. 5th, 1940.

Services up to & Including 10/5/1940	90.00
Expenses up to & Including 10/5/40	27.90
	<hr/>
	117.90

4836

Automotive

Oct. 12th, 1940.

Services up to & Including 10/12/40	90.00
Expenses up to & Including 10/12/40	28.90
	<hr/>
	\$118.90

J. A. W.

1837

Automotive

October 19th, 1940.

Services up to & Including 10/18/40	\$90.00
Expeses up to & Including 10/19/40	28.90
	<hr/>
	\$118.90

J. A. W.

1018

Defendants Exhibit No. 26.

1838

Oct. 26th, 1940.

Services up to & Including 10/26/40	90.00
Expenses up to & Including 10/26/40	31.90
	<hr/>
	121.90

J. A. W.

1839

Automotive

Nov. 2nd, 1940.

Services up to & Including 11/2/40	90.00
Expenses up to & Including 11/2/40	29.85
	<hr/>
	119.85

J. A. W.

1840

Automotive

Nov. 9th, 1940.

Services up to & Including 11/9/40	90.00
Expenses up to & Including 11/9/40	41.90
	<hr/>
	131.90

J. A. W.

1841

Automotive

Nov. 16th, 1940.

Services up to & Including 11/16/40	90.00
Expenses up to & Including 11/16/40	47.90
Pretex Expenses	167.85
	<hr/>
	\$245.75

1842

Automotive

Nov. 23rd, 1940.

Services up to & Including 11/23/40	90.00
Expenses & Pretex up to & Including 11/23/40	89.90
	<hr/>
	179.90

1843

Automotive

Nov. 30th, 1940.

Services up to & Including 11.30.40, 2 men	\$180.00
Expenses & Pretex. Lunches & pay given to Mr. & Mrs. Thomasma Including gas—storage	113.5
	<hr/>
	\$293.95

Expenses of men. No charge made for my service or the other two persons.

J. A. W.

Accounts Payable

1844

Automotive

Dec. 7th, 1940.

Services up to & Including 11.7.40, 2 men	\$180.00
Expenses up to & Including 11.7.40	96.85
	<hr/>
	\$276.85

1845

Automotive

Services up to & Including 12.14.40, 2 men	180.00
Expenses & Pretex. car—Pay—Meals for G. T.	137.65
	<hr/>
	317.65

J. A. W.

1846

Automotive

Dec. 21st, 1940.

Services up to & Including 11.21.40, 2 men	\$180.00
Expenses including Hat & belong for G. T. Expense of Pretex for information	196.80
	<hr/>
	376.80

J. A. W.

1020

Defendants' Exhibit No. 27.

1847

Automotive

Dec. 28th, 1940.

Services up to & Including 12/28/40, 2 men 180.00

Expenses— including time & Expense of G. T. 198.85

Notary service & ch. 198.85

\$378.85

J. A. W.

1848

Automotive

Jan. 4th, 1941.

Services & Expenses in Full up to and Including
1 4 1941 \$186.70

1849

DEFENDANTS' EXHIBIT NO. 27.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

I, George B. Thomasma, hereby acknowledge receipt of one AMMCO Shaping Machine and the sum of Two Hundred Dollars (\$200.00) as compensation and reimbursement in full to date for all services, disbursements and expenses rendered, made or incurred by me for or on behalf of Automotive Maintenance Machinery Co., of North Chicago, Illinois, in respect to torque wrenches, cylinder surfacing tools, and other articles or devices manufactured and sold by said Automotive Maintenance Machinery Co., and upon which I may have worked from time to time to date hereof.

In accepting this compensation, it is understood by me, and I agree, that I will not hereafter incur any expense of any name or nature for or on behalf of said Automotive Maintenance Machinery Co., without the consent of said Automotive Maintenance Machinery Co.

George B. Thomasma.

Park Ridge, Illinois.

June 27, 1942.

1850

DEFENDANTS' EXHIBIT NO. 28.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 1, 1941.

Mr. George B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois

Dear George:

I am in receipt of a letter from Mr. Fidler dated March 24 with which he submitted the following:

- One original drawing covering power drive details.
- One original drawing showing mark for power drive.
- One original drawing dated October 10, 1940, covering a power drive casing.
- One power drive model.
- One original drawing of a universal valve tool.
- One model cylinder resurfacing tool body with universal drive connection.

One photostatic copy of cylinder resurfacing tool drawing. I will comment on the separate items as follows:

Power Drive for boring bar of line boring tool:

We are not interested in this item because it provides a right angle drive, and furthermore, we doubt its patentability because it is similar to many conventional worm gear speed reducers now on the market.

We have found that the vibration is due primarily to the vibration of the electric drill and not because of our power drive. Furthermore, when boring the operator likes to stand in line with the boring bar instead of at right angles for reasons that you will readily recognize.

1851 Cylinder resurfacing tool:

This item is interesting to us and we are keeping this model resurfacing tool body and the photostatic copy of the drawing of same for further study.

Our present surfacing hone has a range of from 2 1/4" 16" to 4 1/8". Please let me know what you estimate the range of your surfacing hone will be.

Another problem to be worked out is how to avoid cutting on one edge of the stones in the very small diameters and on the other edge of the stones in the larger diameters.

Still another problem in this connection is that your tool is laid out as a three stone tool which will not permit the use of impregnated felt for lubrication, which would not provide a good finish unless a lubricant was added during the operation.

Your suggestions with respect to these problems will be appreciated.

Universal Valve Tool:

We do not consider that this valve tool is in our line. It may be an excellent tool but as you know we are not in a position to sell a single valve tool inasmuch as we do not manufacture and sell a full line of valve tools. Accordingly, we suggest that you submit this tool to any one of a number of companies with whom you are familiar who manufacture a line of valve tools.

Accordingly, we are returning to you under separate cover the following:

- One original drawing covering power drive details.
- One original drawing showing mark for power drive.
- One original drawing dated October 16, 1940, covering a power drive casing.
- One power drive model.

One original drawing of a universal valve tool.

1852 As previously stated we are retaining for further study the following:

One model cylinder resurfacing tool body with universal drive connection.

One photostatic copy of drawing of resurfacing tool.

We are very anxious to have another good cylinder resurfacing tool to offer to the trade as a premium item and we hope that your suggestions and our own on this particular tool can be developed to a successful conclusion.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By: Fred G. Wacker,

Pres.

fgw ms

1853 DEFENDANTS' EXHIBIT NO. 29.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.
April 16, 1941.

Mr. Fred G. Wacker
2100 Commonwealth Ave.
North Chicago, Ill.

Dear Mr. Wacker:

I am in receipt of your letter dated April 1. I am pleased to note your comment on drawings and models sent thru Mr. Fidler. I am sorry my power drive can not be patented. Mr. Fidler assures me I will be reimbursed for time and material.

The range of my surfacing hone is 24" to 44".

I believe springs can be shaped to reduce corner wear on stones to a minimum.

Experiments with impregnated felt and abrasive stones combined will prove satisfactory.

In a recent telephone conversation with Mr. Fidler I mentioned your letter. Mr. Fidler promised to arrange a conference as soon as his plans will permit.

1854 I have several ideas I will submit for discussion.

Thanking you I am,

Yours truly,

George B. Thomasma

1855 DEFENDANTS' EXHIBIT NO. 30.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 21, 1941.

Mr. Geo. B. Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Replying to your letter of April 16 will state that we are only interested in the development of tools or products that we can add to our line and we have never had in mind that you would go ahead with experiments that we had

not authorized and then have you expect to be reimbursed for the cost of these experiments.

As previously stated, however, we are definitely interested in making an arrangement with you on any new developments that will be of commercial value to us.

In this connection we are very much interested in the development of your surfacing hone. In your letter of April 16 you state that the range of your surfacing hone is $2\frac{1}{2}''$ to $4\frac{1}{8}''$.

I turned the body and drawings of this tool over to one of our engineers and asked him for his suggestion of a suitable spring to give your surfacing hone the same range as our own. Our range as you will recall is from $2\frac{11}{16}''$ to $4\frac{1}{8}''$.

After making a number of layouts our engineer reported that in his opinion it would require four sets of springs that would have to be put on and taken off for different diameters to cover the full range above mentioned.

Accordingly, we will appreciate receiving from you a sketch of a suitable spring to cover the range mentioned in your letter as we, frankly, don't know how to work it out.

You have no doubt studied this situation and have some definite ideas in mind; and we will be glad to complete and test the tool if you will give us a sketch of a spring that will layout satisfactorily on paper to cover the full range without taking all the wear on the corners at the low and high points of expansion.

Incidentally, I am wondering what Precision is doing by way of manufacturing wrenches and whether or not they have developed a new model of wrench.

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.

By Fred G. Wacker,

Pres.

fgw:ms

1857. DEFENDANTS' EXHIBIT NO. 31.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 4, 1941.

Mr. George B. Thomasma
1121 Potter Ave.
Park Ridge, Ill.

Dear George:

Just a line to acknowledge receipt of model Cylinder Surfacing hone which you submitted to Mr. Fidler and which he in turn sent to me.

This tool looks very much better than your first one and I hope that the details can be worked out with respect to satisfactory performance and also that it will be possible to secure some reasonably good patents claims on it.

Off hand, neither Mr. Fidler or I remember having seen any patents on a tool like this one.

In any event, we are going to get busy on it right away and will keep you advised of developments.

Very truly yours,
Automotive Maintenance Machinery Co.

By

President.

FGW:BLM

1858. DEFENDANTS' EXHIBIT NO. 32.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 21, 1941.

Mr. George B. Thomasma
1121 Potter Ave.
Park Ridge, Illinois.

Dear George:

Enclosed is a copy of our self-explanatory letter of even date to Mr. Fidler regarding your Cylinder Surfacing Tool.

Very truly yours,

Fred G. Wacker,

Pres.

ms
enc.

1859 DEFENDANTS' EXHIBIT NO. 33.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 25, 1941.

Mr. George B. Thomasma,
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Mr. Fidler wrote me telling me of your letter of June 24 and I hasten to put your mind at ease.

We are all very much impressed with your Cylinder Surfacing Tool and we feel confident that it will work. Of course, in the final analysis, the proof of the pudding is in the eating. We are not attempting to redesign your tool. We realize fully that your tool was merely a model; and we are merely going to try to build a working tool along substantially the same lines but of sufficient strength for service.

We may want to change the universal joint but that should have nothing to do with the patentability of your tool and we hope that by cooperating with you we will be successful in securing a patent under which in turn we anticipate receiving an exclusive license from you.

We will not under any circumstances attempt to design around your development or to rob you of anything to which you are fairly entitled. To do that would constitute buying another ticket to a lawsuit, which as you know, is contrary to our policy.

If your surfacing tool works out satisfactorily and we can secure reasonable patent claims on it and if you are willing to be reasonable we hope at that time to be able to work out an arrangement with you that will be entirely agreeable to you.

We further hope that you will continue to submit your new developments to us.

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,

Pres.

faw:ms

1860 DEFENDANTS' EXHIBIT NO. 34.

(Letterhead of Davis, Lindsey, Smith & Shoups, Chicago.)

July 2, 1941.

Mr. Fred G. Wacker
Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois.

Dear Mr. Wacker:

I enclose a copy of a letter dated June 30th just received from Mr. Thomasma respecting the various matters that he has had up with you. I believe you will find this letter self-explanatory.

Very truly yours,

R. E. Fidler.

F. J.

Enclosure

1861 DEFENDANTS' EXHIBIT NO. 34-A.

(Filed Aug. 13, 1943: Roy H. Johnson, Clerk.)

Park Ridge, Illinois
June 30, 1941.

Mr. R. E. Fidler
332 So. Michigan Avenue
Chicago, Illinois.

Dear Mr. Fidler:

I have your letter of June 27 with my drawings.

Mr. Wacker wrote two letters on June 25th one, I am pleased expresses his sentiments regarding my model hone also my efforts in this direction.

The other a request for information. I will gladly do all I can secure all information and forward same to him at once.

I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

Thanks again.

Very truly yours,

(Sgd.) George B. Thomasma.

1862

DEFENDANTS' EXHIBIT NO. 35.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

July 8, 1941.

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Replying to your letter of July 1 I will be glad to meet you at the factory in North Chicago some evening if you will first telephone me for an appointment a couple of days in advance.

I have been out of the city a great deal and I get into Chicago only occasionally. I might be able to meet you in Chicago late some afternoon, if that would be more convenient.

I almost always have lunch at the factory during the noon hour so that would be a good time for you to telephone me.

With kindest regards,

Very truly yours,

Fred G. Wacker,

Pres.

fgw/ms

1863

DEFENDANTS' EXHIBIT NO. 36.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

July 28, 1941.

Mr. George Thomasma
1121 Potter Ave.,
Park Ridge, Illinois.

Dear George:

Supplementing our recent conversation in which you suggested the possibility of developing a simple type of Tension Wrench with a built-in ratchet, will state that for the time being at least it is necessary for us to standardize on the wrench models that we have in view of the demand upon us.

In other words, we are not now in a position to bring

out and manufacture a variety of different models; but we may be interested at some future date, so let's not forget it.

With kindest regards,

Very sincerely,

Automotive Maintenance Machinery Co.

By Fred G. Wacker,

President.

FGW/LP

1864 DEFENDANTS' EXHIBIT NO. 37.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.

March 25, 1942.

Mr. F. G. Wacker.
490 E. College Rd.
Lake Forest, Ill.

Dear Mr. Wacker:

About a month ago I called at your home to discuss my tension wrench with you, as I have not heard from you I wonder if you gave this matter your attention.

I hope I am not over enthused but I believe if P. I. M. Co. (New Deal Parlance) can make and sell their present model at a nice profit, I am confident my design should net me a good return.

If your plant is too busy to handle this perhaps something can be worked out, that I could help make this a success.

Please let me hear from you regarding this tool.

Truly yours,

George B. Thomasma.

1865

DEFENDANTS' EXHIBIT NO. 38.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.

April 1, 1942.

Mr. F. G. Wacker
Arlington Hotel
Hot Springs, Ark.

Dear Mr. Wacker:

Thanks a lot for your letter.

The sketch I showed you of my tension wrench did not show an adjustment but I believe I did say, if I were to make them I would provide for adjustment.

I would like to make wrenches but I do not have money or equipment to proceed with this.

If I had a small shop I am sure I could enjoy a fine income.

I will try to make some test models and I will be pleased to show them to you.

With my best wishes for your good health.

Truly yours,

George B. Thomasma.

1866

DEFENDANTS' EXHIBIT NO. 39.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.

April 22, 1942.

Mr. F. G. Wacker
490 College Road
Lake Forest, Ill.

Dear Mr. Wacker:

I am busy making test models of my tension wrench as you know I can do this work very well, but I realize I need patent counsel if I am to succeed, I would prefer Mr. Fidler handle my claims for me if he is willing.

I would like to know if you would object to this for any reason.

I could use one of your fine shapers to good advantage and I wonder if I could get one perhaps on a lease/loan

basis to complete my models quicker and save valuable time.

Very truly yours,

G. B. Thomasma.

1867 After Five Days Return to

G. B. Thomasma

1121 Potter Ave.

Park Ridge, Illinois

(Stamp) Chicago Apr 23 1030 AM 1942 Ill.

Canceled

3-Cent

U. S. Postage

Stamp

Jefferson Station

Mr. F. G. Wacker.

490 College Road

Lake Forest

Ill.

1868 DEFENDANTS' EXHIBIT NO. 40.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

April 28, 1942.

Mr. George Thomasma

1121 Potter Ave.,

Park Ridge, Illinois.

Dear George:

Replying to your letter of April 22 I am interested to note that you are busy making sample models of your tension wrench; and as previously stated we will be interested to have the opportunity of looking your wrench over after it is worked out in its final form.

In reply to your thought that you would like to engage Mr. Fidler as your patent attorney I doubt if this would work out satisfactorily. While I do not anticipate any conflict of interests at this time, such a situation might develop in the future; and in that event Mr. Fidler would be placed in a very difficult position trying to serve two masters. Inasmuch as we were his original client you would find yourself in second place, which I do not think you would want.

I suggest that you ask Mr. Fidler to recommend to you another competent and reliable patent attorney, which I am sure he will be glad to do for you.

In reply to your suggestion that we give you a Shaper on a "lease-land" basis will state that all of our shaper

shipments are subject to priority regulations by the Tools Branch of the War Production Board and every single machine is scheduled months ahead in accordance with the order. They check up on us very closely and would rattle bell with us were we to fail to adhere to their schedule. Accordingly, George, I am afraid that it will be impossible for us to take care of you on a shaper unless you can supply us with an adequately high priority. On any other basis we can't ship a shaper to our best friends.

With kindest regards,

Very sincerely,

fgw:ms

Fred G. Wacker

DEFENDANTS' EXHIBIT NO. 41.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 12, 1942

Mr. George Thomasma

1121 Potter Ave.,

Park Ridge, Illinois

Dear Mr. Thomasma:

Mr. Wacker has asked that I return your experimental surfacing tool to you as you requested of Mr. Fidler.

I am sending it to you today by prepaid express.

Very truly yours,

Automotive Maintenance Machinery Co.

By

ms

Secretary to Mr. Wacker

DEFENDANTS' EXHIBIT NO. 43.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

October 10, 1940

Mr. Fred G. Wacker

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Dear Mr. Wacker:

In view of our previous telephone conversations respecting investigation expenses in connection with Interference No. 77,565, I instructed our bookkeeper to let me have your

September bill so that I could write you about the matter. The bill in question is enclosed.

The investigation expense having to do with Interference No. 77,565, has given me great concern. The expense for September was more than I anticipated but, in view of the fact that that expense was held down to the minimum, under the circumstances, I do not see that there is anything that I can do about it,—except to completely forget about any time that I have put in on the matter. I spent considerable time in going into the matter with the investigator, mapping future plans, but I will not make any charge for my services in that respect.

According to the information that I have, the services rendered with respect to the investigation have been charged for at the very minimum rate. Circumstances 1871 beyond our control necessitated the spending of a great amount of time,—some of it in order to retain the position we had originally gained. The expense has now been cut down to approximately \$100.00 per week and this amount will be maintained until about the 24th of October, the date on which the other party must complete its testimony.

The expense in this matter has run more than I anticipated, and at that, the services have been rendered at a wholesale charge basis, except for the original \$500.00 which was an out-of-pocket expense at the very beginning.

I am sure that you appreciate the situation and that I am doing everything possible to hold down the expense. I am also quite sure that you will feel that the expense was worth while if we attain our objective. The situation is a most difficult one to cope with and our hope of success lies in a never-ending effort until we have done everything possible to accomplish our end.

Of course, if you feel that the expense is going beyond any amount that might be warranted under the circumstances, I am in position to halt all further activities, relying on what we have already gained. Naturally our position would be best by continuing as in the past, but I do not want to do anything contrary to your wishes from the expense standpoint.

If you have any suggestions to offer, I would appreciate hearing from you.

With kindest personal regards, I am

Very truly yours,

F. J.

1034

Defendants' Exhibit No. 43.

1872

DEFENDANT'S EXHIBIT NO. 44.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.,
North Chicago, Ill.)

April 21, 1941.

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Ill.

Attention: ~~Mr.~~ R. E. Fidler

Dear Mr. Fidler:

Attached hereto is a copy of my self-explanatory letter
of even date to George Thomasma.

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.,

By Fred G. Wacker,

Fred G. Wacker,

Pres.

fgw:ms

1873

DEFENDANTS' EXHIBIT NO. 45.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

June 20, 1941.

Mr. George Thomasma
1121 Potter Road
Park Ridge, Illinois

Dear George:

I wish to acknowledge receipt of the cylinder surfacing
tool drawings dated April 28th and May 6th, 1941, which
Mrs. Thomasma delivered to me the other morning. I was
in conference at the time Mrs. Thomasma came in and, for
that reason, I did not get to see her. In fact, I was not
disturbed when she came in and she had left at the time
that I was informed that she had been here.

The tool which you left with me sometime ago, and which
is shown by these drawings, was sent to Mr. Wacker. I do
not know whether he has written you concerning it, but he

acknowledged to me its receipt and indicated that it has some favorable points. I understand he is looking into it and will either write to you or to me. In the meantime, I have sent the drawings on to him.

With kindest regards, I am

Very truly yours,

F:J

1874 DEFENDANTS' EXHIBIT NO. 46.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

Park Ridge, Ill.,
June 24-41

Mr. R. E. Fidler:

Your letter of 20th in hand. I am very sorry you were unable to see Mr. Thomasma when she delivered my drawing to your office.

I have a copy of Mr. Wacker's letter to you and I am surprised to learn the wood strips were removed and replaced with Stones and felts and after trial discovered my Model was not rugged enough, as a result the guide pins broke away from holders, when I delivered this tool to you I mentioned the fact, the guide pins were soldered to holders, inasmuch as this Model was hand made for appearance only, for practical purpose these guide pins should be welded or riveted to holders to withstand strain of actual use.

I do not believe Mr. Wacker and his engineers should attempt to redesign any tool I design without my permission.

I believe I know what is required to stand the gaff, and will on order from Mr. Wacker make a tool I am sure will withstand tests equal to normal use.

1875 If Mr. Wacker will forward stones and felts for same I will build a tool at once.

I am sure you are aware of the cost of experiments on my part to date and I would like definite information regarding his promise to me, thru Mr. Travis, last year.

I trust you will give this your attention.

Very truly yours,

George B. Thomasma.

1036

Defendants' Exhibit No. 48.

1876

DEFENDANTS' EXHIBIT NO. 47.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.,
North Chicago, Ill.)

June 25, 1941.

Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois
Attention: Mr. R. E. Fidler

Dear Mr. Fidler:

You will find enclosed copies of our self-explanatory letters of even date to George Thomasma which we hope will clarify the situation with regard to his Cylinder Surfacing Tool.

With kindest regards,

Very truly yours,
Automotive Maintenance Machinery Co.
By Fred G. Wacker,
Fred G. Wacker,

Pres.

fgw:ms
2 enc.

1877

DEFENDANTS' EXHIBIT NO. 48.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 27, 1941.

Mr. George Thomasma
1121 Potter Road
Park Ridge, Illinois

Dear George:

I sent a copy of your letter of June 24th to Mr. Wacker. This is the letter that Mrs. Thomasma delivered to me personally. I note that Mr. Wacker wrote you directly on June 25th answering some of the questions raised in your letter and I hope that you found his reply satisfactory.

Some time ago I sent Mr. Wacker the drawings that you gave me covering the cylinder surfacing tool. He has returned them stating that he does not need them since he

has the tool. I am therefore returning these drawings to you for safekeeping. I have, nevertheless, retained blue prints of the same in my files so that the record will be kept clear as to the subject matter submitted.

With kindest regards, I am

Very truly yours,

F:J

Enclosures

CC: Mr. Fred G. Wacker

1878 Post Office Department
Official Business

Registered Article

No. 864902

Insured Parcel

No.

Penalty for Private Use
to Avoid Payment of
Postage \$300

Postmark of Delivering
Office

(Park Ridge Ill.)
(Jun 30)
(8 P M)
(1941)

Return to Davis Smith C. Shonts

(Name of Sender)

Street and Number,
or Post Office Box.)

332 S. Michigan Av.
Chicago, Illinois,

1879

Return Receipt.

(Park Ridge, Ill.)
(Jun 30)
(8 P M)
(1941)

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 George Thomasma

(Signature or name of addressee)

2 (Illegible)

(Signature of addressee's agent

—Agent should enter addressee's name on line One above)

Date of delivery 6/30, 1941.

1038

Defendants' Exhibit No. 48

1880 Mr. George Thomas
1121 Potter Road
Park Ridge, Ill.
(Annex)

1881

Postmaster per Per

Receipt for Registered Article No. 864902

Fee paid 15 cents.

Declared value No

Return Receipt fee 3

Delivery restricted to addressee:

in person or order

Class postage

Surcharge paid, \$

Spl. Del'y fee.

Fee paid

Accepting employee will place his
initials in space indicating restricted
delivery.

(Illegible)

Postmark

(Mailing Office)

The sender should write the name of the addressee on
back hereof as an identification. Preserve and submit this
receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic registry fees
range from 15 cents for indemnity not exceeding \$5 up to
\$1 for indemnity not exceeding \$1,000. The fee on domestic
registered matter without intrinsic value and for which in-
demnity is not paid is 15 cents. Consult postmaster as to
the specific domestic registry fees and surcharges and as
to the registry fees chargeable on registered parcel-post
packages for foreign countries. Fees on domestic registered
C. O. D. mail range from 25 cents to \$1.20. Indemnity claims
must be filed within 1 year (C. O. D. 6 months) from date
of mailing.

1882

DEFENDANTS' EXHIBIT NO. 49.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge, Ill.,
June 30, 41.

Mr. R. E. Fidler,
332 So. Michigan Ave.,
Chicago.

Dear Mr. Fidler:

I have your letter of 6-27 with my drawings.

Mr. Wacker wrote two letters on June 25th, I am pleased expresses his sentiments regarding my model here also my efforts in this direction.

The other a request for information.

I will gladly do all I can to secure all information and forward same to him at once.

I know of no person I would rather submit my developments to and if they appeal to him I assure you again Mr. Wacker has first choice.

Thanks again.

Very truly yours,
George B. Thomasma.

1883

DEFENDANTS' EXHIBIT NO. 50.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Park Ridge,
Dec. 1, 1941.

Mr. R. E. Fidler,
332 So. Michigan Ave.

Dear Mr. Fidler:

Please find dial and page out of magazine enclosed as per our telephone conversation of even date.

Yours very truly,

George B. Thomasma.

1040

Defendants' Exhibit No. 60.

1884

DEFENDANTS' EXHIBIT NO. 52.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Rudolph B. Salmon, Chicago.)

December 27th, 1940.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan Avenue,
Chicago, Illinois.

To Rudolph B. Salmon, Dr.

To examination, comparison and opinion of
drawings in re Zimmerman vs. Larson

\$50.00

(Written across face.)

Received Payment, 12/30/40. Rudolph B. Salmon, O. K.
R. E. F.

1885

DEFENDANTS' EXHIBIT NO. 60.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery
Co., North Chicago, Ill.)

February 3, 1941.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.

Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Interference No. 77,565,

Automotive Snap-On Settlement Agreement.

Replying to your letter of January 31 I gather from Snap-On's letter that they will try to substitute Torque Wrenches of different design on their industrial orders and on that way permit themselves to ship a greater quantity of wrenches to the Government without exceeding the total of 6,000.

Personally, I do not think we would be justified in spending the money to get into another argument with them unless we could hold them to the line beyond any question of doubt.

Of course the thing that I anticipate Snap-On and Precision will do is to try to get the Government to demand these wrenches regardless, unless we can fill the orders of the Government in the same sizes, the same specifications and at the same prices, and if that should happen it will certainly put us on a spot.

Please let me know if Mr. Hobbs will arrange for us to receive some sample Precision wrenches or whether we will have to get them in a more roundabout way.

With kindest regards,

Very sincerely,
Automotive Maintenance Machinery Co.,
By Fred G. Wacker,
Fred G. Wacker,
Pres.

fgw/ms.

1886 DEFENDANTS' EXHIBIT NO. 61.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Petition.
Exhibit 5.

September 28, 1938.

Preliminary Understanding:

Kenneth R. Larson and
Snap-On Tools Corporation.

Larson Patent application entitled "Torque Wrench".

Serial No. Filed

Attorney's File No. 11354.

It is understood and agreed that the assignment of the aforesaid patent application from Kenneth R. Larson to Snap-On Tools Corporation is being held as security for the payment of patent legal services in connection with the preparation and filing of the above-identified patent application covering the submitted torque wrench. Further Larson shall supply wrenches to Snap-On Tools Corporation of the submitted design at prices mutually agreed upon between Snap-On Tools Corporation, and further, Larson agrees to permit Snap-On Tools Corporation to withhold one-fourth of the purchase price from each order as a defensive patent litigation fund to be used by Snap-On Tools Corporation in the event they are sued for patent.

infringement by virtue of their sale of torque wrenches they are supplied by Larson. When this defensive litigation fund amounts to \$2000.00, the Snap-On Tools Corporation is to withhold one-eighth of the purchase price from each successive order until a fund of \$4000.00 is created to be held in trust by Snap-On Tools Corporation. Larson agrees to indemnify Snap-On Tools Corporation for any and all legal expenses and awards of damages or profits against it by any Court owing to its sale of said wrenches, and the aforesaid litigation fund may be used by Snap-On Tools Corporation toward safeguarding itself should it be required to defend any suits. Should no suit be instituted for patent infringement against Snap-On Tools Corporation by virtue of their sale of wrenches supplied by Larson within three years of the date of the first shipment, then this litigation fund is to be returned to Larson with whatever interest that has accumulated thereon at the saving bank account rates in force in the City of Kenosha, State of Wisconsin.

Snap-On Tools Corporation is to have an exclusive license to sell the submitted torque wrench under any patent that may eventuate from the patent application that is about to be filed in the United States Patent Office, and

should Larson fail to maintain an adequate supply of 1887 the submitted torque wrenches for Snap-On Tools

Corporation at mutually agreed prices or Larson discontinues to manufacture these torque wrenches or fails to meet the workmanship and material guarantees or reasonably prompt shipments, then Snap-On Tools Corporation may take up the manufacture of these wrenches to supply their requirements at anytime that the supply is not available to them at mutually agreed prices or Larson discontinues the manufacture of these wrenches or fails to maintain competitive prices to Snap-On Tools Corporation that should be not more than the average of the three lowest bids received by Snap-On Tools Corporation from other firms for the manufacture and supply of these wrenches. Evidence of three written bids from competitive firms shall be sufficient to require Larson to reduce the prices to Snap-On Tools Corporation to correspond with the average of the three lowest bids for manufacturing the aforesaid wrenches according to specifications prescribed by Snap-On Tools Corporation.

Larson agrees to replace any and all wrenches that are

defective or that may become defective in use by the customers of Snap-On Tools Corporation, and Larson unconditionally guarantees these wrenches under the same terms and conditions prescribed by Snap-On Tools Corporation to its customers, and the cost of patent protection shall be borne by Snap-On Tools Corporation and deducted from the amounts due and owing Larson from time to time.

This memorandum is to be incorporated into a formal contract and when and if all the conditions hereof are complied with by Larson, Snap-On Tools Corporation will reassign the patent application or any patent eventuating therefrom to you in exchange for an exclusive license under any issued patent. Should it come about that under the terms of this understanding, Snap-On Tools is required to manufacture its own supply of wrenches according to your submitted design and a patent issued to Larson, then and thereafter Snap-On Tools Corporation will pay you a royalty of five per cent (5%) of the sales price of these wrenches to their branches until such time as the patent expires or is declared invalid or competition develops to an extent that Snap-On Tools Corporation is not in a position to enjoy its exclusive rights under any patent issued to Larson.

Larson agrees to supply these wrenches in the capacities of 75 ft. lbs.; 350 ft. lbs.; 500 ft. lbs., and 1000 ft. lbs.; and Snap-On agrees to purchase the first two sizes in minimum quantities of 500 by furnishing Larson with a purchase order specifying delivery thereon as needed by Snap-On Tools Corporation. Reasonably prompt shipments by Larson shall entail not more than ten days from receipt of repeat orders and thirty days on the original order.

Kenneth R. Larson (Sgd.),

Snap-On Tools Corporation,

By Joseph Johnson (Sgd.),

Vice-President.

1888

DEFENDANTS' EXHIBIT NO. 62.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago.)

November 11, 1940.

Precision Instrument Mfg. Co.,
1846 Miner Street,
Desplaines, Illinois.

Attention: Mr. Kenneth R. Larson and
Mr. Richard Carlson.

Re: Larson vs. Zimmerman Interference
No. 77,565—File 11484.

Gentlemen:

I received an anonymous telephone call this morning by a party who said he was a brother to a friend of mine who knew I was representing a party involved in a case that concerns a tool. This supposed friend of mine wanted to let me know through his brother who called that he knew that the witnesses presented in behalf of my client perjured themselves. This party refused to give me their name and the only reason he said that his brother did not call me was that I knew his voice and he did not want me to know the source of this information.

I told this party that I have received several inferences to the same effect and that every effort was made to check these charges by arranging for a conference with a party who was supposed to know. I also advised him that this party refused to keep their appointment and for that reason nothing was accomplished.

The impression I am under is that Attorney Krichner representing Tomasna, was the party who was behind the anonymous call. Obviously, I cannot continue as attorney for any party who has presented fraudulent testimony and evidence, but thus far my efforts to check to corroborate these charges have not been satisfied nor have they been fruitful of any results.

It seems to me that this party who called or any one behind this call would submit the proofs rather than rely on an indirect call from an unknown source. I am giving you this information as it was relayed to me and feel that you are duty-bound to convey to me any information that

you receive one way or another as to the truth or untruth of the remarks that have been made.

Yours very truly,

Harry C. Alberts.

HCA:EM.

P.S. Leaving for the East—will return Friday.

1889

DEFENDANTS' EXHIBIT NO. 63.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 4, 1940.

Precision Instrument Manufacturing Co.
1846 Miner Street
Des Plaines, Illinois

Attention: Mr. Larson

Gentlemen:

This letter reviews the conference of some length which we had this morning. As we told you, we had a conference on Monday with Mr. Fidler. We told him that we were not interested in reading the record nor of making any investigation of facts further than was necessary to establish what should be done to protect the interests of everyone. This seems to be Mr. Fidler's viewpoint. We told him that we were willing to concede priority; that we wished an appropriate release of damages and that we wished a license to protect our customers and to permit us to fulfill existing contracts and commitments. We believe that Mr. Fidler is in agreement on principle.

After the conference with you and explaining in detail what has been summarized above, we propose to write Mr. Fidler a letter substantially along the lines indicated in the attached copy.

We would like your early comments on the proposed letter.

We enclose also our statement for \$250.00 against which charges will be credited as they accrue. This statement is prepared upon the assumption that the matter can be settled. Obviously if it becomes necessary to embark upon extensive litigation, our retainer would be much larger.

We would appreciate your prompt attention to the statement.

Yours very truly,

Haight, Goldstein & Hobbs;

By M. K. Hobbs

MKH:FS

Enclosures

1890

DEFENDANTS' EXHIBIT NO. 64.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Raymond D. Fidler, Esq.
332 South Michigan Ave.
Chicago, Illinois

December 4, 1940

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

Earlier today we talked with our clients about this matter and its proposed settlement. As we have indicated to you, we have not read the record nor do we propose to do so, at least at this step of the proceedings. Rather our philosophy is based upon the assumption that everybody is wrong, and that the practical thing to do is to make a definite settlement of rights. We therefore propose the following:

1. Larson will concede priority to Zimmerman;
 2. Amco will give an appropriate release to Larson and Precision Instrument Manufacturing Co. against claims of civil damages;
 3. The owner of the Zimmerman application and patent, whom we assume to be Amco, will give to Precision Instrument Manufacturing Company a non-exclusive license under the Zimmerman application and patent so that Precision's customers will be protected against charges of patent infringement; and as consideration for the license, Precision will pay 3% on all wrenches delivered after the date of execution of the contract. Further we will use our best efforts, and believe that we can succeed in them, to have Snap-On deduct from its payments to Precision the amount of royalty and pay such royalty directly to Amco.
- We assume that you will consult and advise with your client on the proposal herewith submitted and will, in turn, advise us.

Yours very truly,

MKH:FS

1891 DEFENDANTS' EXHIBIT NO. 65.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)
(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 4, 1940

Precision Instrument Manufacturing Co.
1846 Miner Street
Des Plaines, Illinois

To retainer for professional services re settle-
ment of Larson-Zimmerman interference,
charges to be credited against the retainer. \$250.00

1892 DEFENDANTS' EXHIBIT NO. 66.

(Filed Aug. 13, 1943, Roy H. Johnson, Clerk.)
(Letterhead of Haight, Goldstein & Hobbs, Chicago)

December 6, 1940

Raymond E. Fidler, Esq.
332 South Michigan Ave.
Chicago, Illinois

Dear Mr. Fidler:

Re: Larson-Zimmerman Interference

We have had two conferences with our client in this matter, the last one today. As we have indicated to you, we have not read the record nor do we propose to do so, at least at this step of the proceedings. Rather our philosophy is based upon the assumption that everybody is wrong and that the practical thing to do is to make a definite settlement of rights. We, therefore, propose the following:

- (1) Larson will concede priority to Zimmerman;
- (2) Amco will give an appropriate release to Larson and Precision Instrument Manufacturing Company against claims of civil damages;
- (3) The owner of the Zimmerman application and patent, whom we assume to be Amco, will give to Precision Instrument Manufacturing Company, a non-exclusive license under the Zimmerman application and patent so that

Precision's customers will be protected against charges of patent infringement. For all wrenches heretofore delivered or for which there are contracts for delivery, no royalty to be paid; but on any orders received subsequent to the date of the settlement contract, Precision will pay 3% on the sales price (that is, gross sales minus usual trade discounts). Further, we will use our best efforts, and believe we can succeed in them, to have Snap-On deduct from its payments to Precision, on any sales made to Snap-On, the amount of royalty and pay such royalty directly to Amco.

The foregoing proposal is conditioned upon securing back from Thomasma, stock which he holds in Precision Instrument Manufacturing Company. You may be able to be of help to us in this connection.

1893 We assume that you will consult and advise with your client on the proposal herewith submitted and will, in turn, advise us.

Yours very truly,

Haight, Goldstein & Hobbs,

By M. K. Hobbs

MKH:ES

1896

DEFENDANTS' EXHIBIT NO. 68.

Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)
(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago)

December 19, 1940

Mr. Harry C. Alberts
38 South Dearborn Street
Chicago, Illinois

Dear Mr. Alberts:

Re: Larson vs. Zimmerman, Interference No. 77,565.

We have a copy of your letter of December 18th to Mr. Hobbs.

In view of your letter we, as attorneys for Automotive Maintenance Machinery Co., feel constrained to make our position perfectly clear so that there will be no question about it in the future.

In the first place, we intend to and will proceed with the taking of the depositions pursuant to the notice already served upon you.

In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson application in interference. As attorney for Snap-On and Larson, you took depositions on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on 1897 behalf of Automotive. You employed the reporter.

Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. You and Mr. Johnson should—if you do not—realize that you are holding up the issuance of the Zimmerman patent without the slightest justification. I do not consider your quarrels with Precision as being any justification. Automotive is not interested in that matter.

You cannot shift your responsibility to Mr. Hobbs. We and Automotive do not propose to permit either you or your client, Snap-On, to divest yourselves of responsibility. We simply refuse to permit Automotive to be the "goat".

You have asked Mr. Hobbs to notify Mr. Fidler to direct all future notices to Mr. Hobbs rather than to you. We intend to continue to direct all notices to you until you have formally withdrawn as attorney, and even then we do not propose to permit you to evade any obligations which you have up to that date incurred.

With respect to the transcribing of the Larson record, I think I should say the following in all fairness to Mr. Hobbs. Mr. Fidler did advise Mr. Hobbs that those portions of the testimony which had not been transcribed as of December 2nd, 1940, could be held up because it appeared that a settlement was very likely. I understand that 1898 Mr. Hobbs so informed you. Of course, it was understood by everybody that, if and when the settlement fell through, the transcript would be promptly completed. That is your definite obligation, and we are looking only to you to perform that obligation.

I am enclosing an extra copy of this letter which I would appreciate if you would send to Mr. Johnson of

1050

Defendants' Exhibit No. 70.

Snap-On so that Mr. Johnson will know exactly what Mr. Wacker's position is as we wish to avoid any unnecessary misunderstanding as between them.

Very truly yours,

L.J.

Harry W. Lindsey, Jr.,

Enclosure

CC: Mr. Johnson, Snap-On Tools Corporation

1901

DEFENDANTS' EXHIBIT NO. 70.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Re: Larson *vs.* Zimmerman
Interference No. 77565

Conference Held With Mr. R. E. Fidler at the office of Davis, Lindsey, Smith & Shontz, 332 S. Michigan Blvd. between 1:30 P. M. and 4:30 P. M.—Wednesday, November 21, 1940, at the Telephonic Request of Mr. Fidler.

Mr. Fidler called this morning to advise that he had information that he thought I should know about the Larson case and testimony presented in behalf of Larson and that he was obligated by virtue of professional courtesy to disclose facts that he was certain he had no knowledge of.

(1) At this conference Mr. Fidler held a looseleaf bound typewritten record of a deposition and affidavit of Tomasna which appeared to be something like 100 pages in length and his signature and a notarial seal and a sealed ribbon on the last page. The contents were not discussed in detail but Larson's sketch (Exhibit 27) was certain be proved as the work of Tomasna some time in the fall of 1938 and Fidler has a mechanical pencil drawing made by Tomasna at a later date of an abrasive chuck and spindle arrangement that shows substantially the same drawing arrangement and views together with the same printed lettering. Fidler is holding this as evidence to prove they were both made by the same party and Tomasna made this particular drawing so that he must be the draftsman of Exhibit 27.

(2) Fidler says that Larson was at Amco on numerous evenings with Tomasna in that he had the run of the plant and was more in the nature of a strawboss. He was con-

sitlered a genius in many ways and was supposedly the originator of many good improvements on the Amco wrench that were submitted to Zimmerman, but the later would never adopt them.

(3) The lathe in Larson's basement was purchased out of funds borrowed from the bank and this loan was signed for both by Tomasna and Larson some time in 1937 or 1938. This is contrary to certain testimony of Larson.

(4) Carlson supposedly met Larson for the first time in 1938 through Tomasna's wife who frequented the Carlson beauty shop. Tomasna's wife knew Carlson had money and for that reason suggested he be approached by Tomasna to finance the production of the wrench which Tomasna worked on along with Larson and which admittedly was primarily the work of Larson in its physical development and creation. Tomasna has no complaint about Larson's filing the patent application since the specific features were suggested by Larson and created by him. Nevertheless this proves the early acquaintanceship between Carlson and Larson. According to this story, Larson could not have met Carlson until November 1938 which was about a month after he procured the original blanket order from Snap-On.

1902 (5) It was reported without any certainty that Carlson is operating under an assumed name and that his real name is something other than Carlson. He supposedly purchased a beauty shop operated by one, Walter A. Carlson, and gradually assumed this name and continued the business thereunder. This is the only fact that Fidler was not definitely certain about.

(6) Larson went with Tomasna to the plant of Menasha Railroad Co. at Sturtevant, Illinois to look at their torque wrench and prove to them that Larson's wrench was better. Supposedly the manager of this railroad Company tried to convince Larson that their wrench was superior and would stand more punishment and threw it around to prove that. Larson supposedly tried to imitate the same kind of treatment with his own wrench and at that time broke the handle which corresponds to Exhibit 11 having the broken handle. This happened sometime in 1938 rather than in 1934 as Larson testified.

(7) Fidler claims to know the code representing letters on two of the wrenches. He stated that this code was as follows:

F I S K E G U A N O
1 2 3 4 5 6 7 8 9 0

The serial numbers on Exhibit 31 which is FOX would be 109. On Exhibit 37 which is FOG would be 106; and on one of the exhibits attached to the board, it is believed that the code is FOU or 107. This would mean Exhibit 37 is the sixth wrench, exhibit 31 the 9th wrench and FOUR the 7th wrench, which is not exactly the sequence of dates testified to by Larson.

(8) Tomasna's home was fully paid for and it is reported that Carlson and Larson called a real estate man to appraise it for purposes of determining how much of a mortgage could be placed thereon and that money to be used for financing production of the wrench. While Tomasna supposedly was against this, Carlson and Larson are charged with taking this matter in their own hands when Tomasna declined to permit this at the crucial time. This was in 1938.

(9) Krichiver and Tomasna are apparently cooperating fully with Amco and Fidler and have been for some time. On the charter for Precision Instrument Mfg. Co. Tomasna's name is misspelled as Tamasa. He signed the application for charter in the same manner and this supposedly occurred at the request and insistence of Mr. Carlson.

(10) The aluminum castings set forth on sales slips of Ravenswood Brass Foundry Co. while genuine, supposedly covered castings other than those for the wrench.

1903. (11) Fidler insisted that Wacker of Amco would force this matter out in the open if they were compelled to prove these facts by taking testimony at Hartford, Connecticut (apparently Zimmerman's present residence) and elsewhere in the U. S. at great expense. In that event, action for perjury would be insisted upon and the case thrown wide open with the axe piercing wherever it would fall.

(12) I recommended that a conference be arranged between Fidler, Wacker of Amco, Tomasna, Mr. Johnson of Snap-On and myself. I called Snap-On at 4:30 P. M. and talked to Daniel. Also Johnson. Johnson tentatively set the conference for Thursday, November 28, 1940 at 10 A. M. at my office in that he would be in the East and return through Chicago on that day. Mr. Johnson suggested that this matter be withheld from Larson until this conference had taken place and thereafter it would be submitted to Larson and Carlson.

1904 DEFENDANTS' EXHIBIT NO. 71:

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago)

December 3, 1940

Davis, Lindsey, Smith and Shontz
1901 McCormick Building
332 South Michigan Avenue
Chicago, Illinois.

Attention: Mr. R. E. Fidler

Re: Larson vs. Zimmerman
Interference No. 77,565
File 11484

Dear Mr. Fidler:

This will confirm my announcement at the conference held at your office on November 28, 1940 with Messrs. Wacker, Allen, Thomasna, and Joseph Johnson, that I would withdraw as counsel for Kenneth R. Larson in the above entitled proceedings in view of an alleged contradiction in the Larson testimony. This alleged contradiction indicates that a conflict of interests may develop between Snap-On Tools Corporation and the interests represented by Kenneth R. Larson.

Accordingly, the officials of Snap-On Tools Corporation who were given a complete report on the conflicting versions stated by Mr. Thomasna at your office, on one hand, and the testimony presented by and in behalf of Larson, on the other hand, have authorized me to withdraw as counsel for Larson and the latter has been so advised as of November 28, 1940.

I personally guaranteed to see that you received a refund for \$20.00 erroneously requested of you by the reporter, Mr. Raftery, and I am enclosing herewith that sum less charges paid by this office for photostats that did not come within the understanding to furnish photostats of Exhibits without charge to you. These photostats involve full size reproductions of Exhibit 27 and six sales slips that were not exhibits, but were merely included along with Exhibits 2, 3, 4 and 5.

The cost of these photostats amounts to \$4.55 in ac

cordance with the attached invoice. I have included on this invoice the six sales slips which were contained on another bill involving other photostats not directly connected with this proceeding so I must retain the bill for my files. The prevailing price for 11 x 16 or smaller negatives in Chicago is 50c per copy so that six sales slips amounted to \$3.00 plus \$1.55 per invoice of November 23, 1940 or a total of \$4.55.

1905 My check in the sum of \$15.45 constitutes the difference between the \$20.00 due you for money advanced to the reporter and the charge for photostats made to this office.

Yours very truly,

HCA:EM
Encl.

Harry C. Alberts

1906

DEFENDANTS' EXHIBIT NO. 72.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 11, 1940

Memorandum Re Larson vs. Zimmerman—File 11484.

Mr. Hobbs called and advised that their negotiations with Amco through Fidler have resulted in nothing other than the following arbitrary demands:

1. Wacker wants Snap-On to pay the difference between Amco's former selling price and Snap-On's present selling price or an amount equivalent to about \$3.00 on every wrench that has been sold to date.

2. Amco will not consider 3% as a royalty on present or future orders on wrenches.

3. Amco feels it has been damaged through Snap-On's action and Wacker still persists in the thought that Snap-On is Precision and Precision is Snap-On.

Mr. Hobbs gave me the impression that he has gone as far as he could in the matter and further negotiations would be of no avail. I recommended that he give them a final proposition of Snap-On being willing to cease the sale of the wrench within the counts in interference in the event they will be allowed to complete their present commitments of something like 3100 wrenches and thereupon receive releases as to all present users. If this was not

satisfactory, then to insist that Larson would continue with the interference.

Larson apparently was at Mr. Hobb's office at the time of this telephonic conference and later interviewed me while Mr. Daniel was in the office. Mr. Larson advised that Mr. Hobbs was going to send a final proposition to Fidler via messenger today along the line suggested by me and that in all probability Hobbs would not represent Larson in the event the interference would be proceeded with. Hobb's reason is that he is very busy on infringement suits and would have to charge more than the capacity of Precision can pay.

Later Mr. Lindsey of Davis, Lindsey, Smith and Shorts which is the patent law firm employing Mr. Fidler, called me and asked whether or not Snap-On would be willing to pay any money to Amco. I replied with an emphatic "No" and he then asked what Snap-On would be willing to do. I advised him that Snap-On would be willing to cease selling the present type of wrench when and if their present commitments amounting to something like 3100 were fulfilled and upon receiving a release as to all wrenches sold by them to date.

He then asked if Snap-On would be willing to admit the validity of the patent when issued to Zimmerman and I advised that Snap-On most likely would be willing to admit the validity of the claims in interference in return for a release and the right to fulfill present commitments.

1907 He then asked if Snap-On would turn over to Amco the so-called defense fund in the amount of \$2700.00 belonging to Precision and my reply to that was that in the event Snap-On received a release, then we would abide by any instructions given us by Precision with respect to that fund and Amco would have to make any deal relative thereto with Precision. The purpose of Amco's request for the defense fund was to partially indemnify them for their investigation expense which they claim amounts to something over \$500.00.

I corrected Mr. Lindsey with reference to calling this money a defense fund since it was a fund to indemnify Snap-On rather than to be utilized as defense of any litigation. Then Mr. Lindsey said that perhaps Precision would agree to turn over the money to Amco and Snap-On would under such circumstances release possession thereof in the event Amco would agree to reimburse Snap-On

in the amount of this fund in the event they were sued by anyone else for patent infringement. I merely said such an arrangement as far as Snap-On is concerned would be considered as a possible way out; subject, however, to the discretion of Precision.

I then suggested to Lindsey that whatever proposition Amco was ready to submit so far as Snap-On is concerned should be given to me in writing and that I would give the matter prompt attention and see that there was immediate action thereon.

Harry C. Alberts

1908

DEFENDANTS' EXHIBIT NO. 72-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago)

December 12, 1940

Snap-On Tools Corporation
Kenosha, Wisconsin.

Atten: Mr. W. W. Daniel, Asst. Secretary

Re: Larson vs. Zimmerman—File 11484

Dear Walt:

I am enclosing herewith notes pertaining to the telephonic conferences of yesterday of which you were partially informed during the conference at this office. After you left yesterday, Mr. Lindsey also representing Amco called me on the telephone and the substance of the conversation is contained in the attached notes.

Today, Mr. Hobbs who now represents Precision Instrument Manufacturing Co. called and advised that a conference between Mr. Lindsey and himself was scheduled for 9:30 A. M. Friday morning at the office of George I. Haight. Mr. Hobbs asked me if I would appear in behalf of Snap-On and I said that I would.

I will report the results of this conference as soon as a definite understanding is effected or relate whatever disagreements result therefrom. I noting that I told Mr. Lindsey that it is possible that Snap-On would consent to acknowledge the validity of the claims involved in interference, I might add that this is not a concession in that any interferant or those holding title through an inter-

ferant is by law estopped to deny the validity of claims involved in interference. Therefore, we are not conceding anything and as long as this may smooth the way for protection until such time as you can go into production or purchase a tool that is not covered by the counts in interference, I feel that this would be the thing to do.

If you or your associates have any serious objections to such a position, you had better call my office the first thing in the morning and the message will be relayed to me by telephone.

With kindest regards, I remain

Yours very truly,

HCA:EM

Harry C. Alberts

1909

DEFENDANTS' EXHIBIT NO. 73.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts, Chicago.)

December 17, 1940

Davis, Lindsey, Smith and Shontz
1901 McCormick Building
332 South Michigan Boulevard
Chicago, Illinois.

Attention: Mr. Raymond E. Fidler

Re: Precision Torque Wrenches—Your Submitted
Settlement Agreement File 11580.

Dear Mr. Fidler:

I conferred with my client, Snap-On Tools Corporation, at Kenosha the greater part of the day in connection with your proposed contract of settlement involving your client, Automotive Maintenance Machinery Co. and Snap On Tools Corporation. After a lengthy conference and a thorough consideration of the entire matter from my client's standpoint, the following important facts were ascertained:

1. The subject matter of the second Larson patent application according to the records of Snap-On Tools Corporation resulted between Kenneth R. Larson, on one hand, and the development department of Snap-On Tools Corporation, on the other hand. The records of Snap-On Tools Corporation evidence that the spring tail or highly resilient dial operating beam extension was the sole concept of

George A. Walraven, an engineer in the development department of Snap-On Tools Corporation.

2. Walraven also suggested some improvements in the dial mechanism to overcome defects due to abuse of the wrench and as a result of these suggestions, Larson improved thereon to the extent of formulating the friction clutch pointer mounting element as the equivalent of certain concepts of Walraven, but incorporated the Walraven spring dial actuator without material change as a safeguard against dial mechanism injury.

1910 3. Because Snap-On Tools Corporation did not want to become involved in a joint invention with Larson at that time in view of the provision in the agreement of September 28, 1938, for reversion of all patent applications to Larson or his nominee, Precision Instrument Manufacturing Co., Inc., it was decided at that time not to file a joint application on the combination of features involving a spring tail dial mechanism actuator and the improvements in the dial mechanism that coordinated with each other to preclude defects in the measuring instrumentalities through abuse in the use of the torque wrench.

4. Now that Larson is in a position where he requires the cooperation of Snap-On Tools Corporation to release him under the existing contract dated September 28, 1938 in order to entertain any proposition of settlement submitted by the Automotive Maintenance Machinery Co., there is reason for Snap-On Tools Corporation to assert exclusive possession of its own spring tail dial actuator concept in conjunction with improvements in the dial mechanism that directly resulted through the efforts of Snap-On Tools Corporation and at its expense. For that reason, Snap-On Tools Corporation has concluded that it must insist upon Larson with the assent of his nominee, subscribing to a joint patent application with Walraven wherein claims would be made to their joint conception and that such remain the property of Snap-On Tools Corporation in consideration of releasing Larson and his nominee under the agreement of September 28, 1938. Snap-On Tools Corporation cannot, therefore, agree to the assignment of the second Larson patent application to your client in accordance with the tentative draft of the agreement submitted by you in behalf of Automotive Maintenance Machinery Co.

5. The second patent application of Larson shows but does not claim the highly resilient dial beam extension and measuring instrument actuator because this was not the invention of Larson and at that time it was thought more feasible not to jointly combine Walraven with Larson. A joint patent application would be filed as a substitute for Larson's second sole patent application. The second Larson sole patent application would be formally abandoned in favor of the joint patent application which is to remain the exclusive property of Snap-On Tools Corporation. 1911 In consideration of the foregoing and a free short term license from the Automotive Maintenance Machinery Co. to Snap-On Tools Corporation to endure for a period only sufficient to enable the fulfillment of the present commitments of Snap-On Tools Corporation on torque wrenches thus far ordered from Precision Instrument Mfg. Co. as shown by its records, Snap-On Tools Corporation would be willing to do the following things:

(a) Reassign to Larson or his nominee the patent application serially numbered 232,723 involved in Interference No. 73,697. Thereupon, Larson or his nominee could make such concession with respect to this application as they deem advisable to Automotive Maintenance Machinery Co.

(b) Snap-On would acknowledge the validity of the four claims that were involved in interference and agree not to infringe these claims for the life of any patent that may eventuate therewith; provided, however, Snap-On Tools Corporation is to receive a free license to procure and its present commitments of torque wrenches of the type presently purchased from Precision Instrument Mfg. Co. In return for this concession of validity, Automotive Maintenance Machinery Co. will concede validity of any claims that may be allowed on the resilient spring tail dial mechanism actuator and the improvements in the dial construction described or intended to be described and set forth in the second Larson patent application that is to be substituted by a joint application to be filed in the name of Walraven and Larson. Title in and to this joint application is to be assigned to Snap-On Tools Corporation.

1912 (c) Snap-On Tools Corporation will refund to Precision Instrument Manufacturing Co., Inc., all funds held by it as trustee under the contract dated September 28, 1928 less all reasonable and legitimate expenses in accord-

ance with the terms prescribed therefor in your submitted draft of the agreement.

(d) Snap-On will agree to cancel the agreement of September 28, 1938 with Kenneth R. Larson or his nominee and mutual releases are to be exchanged between these two parties as to any required future performance under the agreement other than prescribed herein.

(e) Automotive Maintenance Machinery Co. is to release Snap-On Tools Corporation in accordance with the terms prescribed therefor in your submitted draft of the agreement.

The proposal herein contained is submitted upon the premise that the agreement involving Snap-On Tools Corporation will be separate and apart from the agreement involving Precision Instrument Manufacturing Co., Inc. Snap-On Tools Corporation does not know the extent to which Larson may be empowered by the stockholders and directors of Precision Instrument Mfg. Co., Inc. to negotiate a settlement of the type submitted by Automotive Maintenance Machinery Co. Further, Snap-On Tools Corporation would not become a party with Precision Instrument Mfg. Co., Inc. to any agreement in that Snap-On Tools Corporation can vouch only for its own performance of any terms subscribed to by it.

Additionally, the agreement of September 28, 1938 requires Snap-On Tools Corporation to reassign title and return the money in trust to Larson or his nominee so that any overt act required of Snap-On Tools Corporation should be in the spirit of and conform to the provisions of the agreement of September 28, 1938; therefore, equitable title to the first Larson patent application and the money refundable to Larson or his nominee under said contract, should be turned back to Precision Instrument Mfg. Co. To expedite matters, Larson or his nominee could be required to endorse any check received from Snap-On Tools Corporation directly to Automotive Maintenance Machinery Co.; however, this is a matter that must be arranged between Automotive Maintenance Machinery Co. and Precision Instrument Mfg. Co., Inc.

In substance, this proposal conforms substantially with the terms of the contract submitted by you in behalf of Automotive Maintenance Machinery Co. except for Larson's second patent application. In this exception, Snap-On Tools Corporation insists that it must prevail for the rea-

sons set forth herein and because it, too, is entitled to receive some consideration for its past development expense and its surrender of such rights as it now possesses under the agreement of September 28, 1938. In accordance with that agreement Snap-On Tools Corporation need not refund any moneys nor reassign the patent applications to Larson or his nominee unless the contract is fully performed and Snap-On Tools Corporation is indemnified.

Without the concessions herein made by Snap-On Tools Corporation, Larson and his nominee could not effect a settlement with Automotive Maintenance Machinery Co. 1914 and this proposal has been arrived at after serious consideration and with the full knowledge that no further concessions can be made by Snap-On Tools Corporation irrespective of the outcome of this controversy.

This proposal is subject to the approval of Kenneth R. Larson or his nominee, Precision Instrument Manufacturing Co., Inc., as a condition precedent to acceptance by the Automotive Maintenance Machinery Co. Should your client be willing to have you submit an agreement in accordance with the terms of this proposal I suggest that in your inducement clause you refer to Snap-On Tools Corporation only as equitable title holder of the Larson patent application pursuant to the agreement of September 28, 1938 rather than state that it is the owner of said patent application. In the submitted draft of the agreement, you have two inducement clauses referring to this title and it is my feeling that a single inducement clause as suggested herein would conform more accurately to the terms of the agreement of September 28, 1938.

Yours very truly,

Harry C. Alberts.

HCA:EM

Cc: Mr. M. K. Hobbs

Snap-On Tools Corporation

1917 DEFENDANTS' EXHIBIT NO. 75.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Haight, Goldstein & Hobbs, Chicago.)

December 19, 1940.

Mr. Harry C. Alberts,
38 South Dearborn St.,
Chicago, Illinois.

Dear Mr. Alberts:

Re: Larson-Zimmerman Interference.

Mr. Larson first consulted us on November 28, or 29, 1940. We immediately took steps to settle that matter and its attendant charges and counter-charges. From the date mentioned until the service of notice for taking testimony yesterday by the attorneys for Zimmerman, no steps or proceedings of which we are aware, were taken in the interference, save for the efforts being made to adjust the matter.

In these efforts and negotiations we represented Larson and Precision Instrument Mfg. Co.

We understand that with the possibility of adverse interests arising between Snap-On Tools Corporation and Larson, you quite properly wish to withdraw as attorney for Larson. We have so advised Larson, and also of the necessity of his engagement of other counsel to represent him.

Yours very truly,

Haight, Goldstein & Hobbs,

By M. K. Hobbs.

MKH:FS.

1918 DEFENDANTS' EXHIBIT NO. 76.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 19, 1940

Davis, Lindsey, Smith & Shonts,
332 South Michigan Avenue,
Chicago, Illinois.

Attention: Mr. Harry W. Lindsey, Jr.

Re: Larson vs. Zimmerman
Interference No. 77,565,
File 11484.

Gentlemen:

I have your letter of December 19, 1940 which was delivered by messenger. This letter is entirely superfluous and constitutes, in my opinion, a good example of the type of duress with which all opposing parties including their attorneys have been subjected to throughout the proceeding and settlement negotiations. I very well know your position and attitude. It is not in keeping with the holiday season—good will toward all mankind. At least you should have postponed the necessity of persons appearing under subpoenae only two days before Christmas when everyone else is busy with preparations for and filled with the Christmas spirit. I expect, therefore, to ask Judge Barns or some other judge sitting in his stead to postpone the required appearance of Mrs. Carlson and Mrs. Larson.

I do not conduct myself as an attorney with the exclusive viewpoint that my client is always right and the opposing party is always wrong. From what I have learned on November 28, 1940, this case presents no exception and on that account should have been settled fairly to both sides without stripping anybody. In the conference of December 13, 1940 you were very friendly, courteous and respectful. The only concession demand made known to me and Snap-On Tools Corporation up to the time of that conference was a concession of priority of the claims in interference. At this conference you presented a much broader demand which you verbally labeled tentative. The writer nevertheless expressed no indication as to what my client's view would be and you had no right to thereafter be belligerent, discourteous and disrespectful.

Frankly, this proposal inwardly shocked me, but I did

not express my feelings at the time. I told you I would confer with my client, Snap-On Tools Corporation. I did this. I placed the entire situation before them, and their conclusions were expressed by me in my letter of December 16, 1940 containing, in my opinion, a very fair compromise subject to the acceptance of Mr. Larson and the Precision Instrument Mfg. Co. over whom I exercise no control.

1919 Just because the counter proposal of Snap-On Tools Corporation (subject to the acceptance of Mr. Larson and Precision Instrument Mfg. Co.) was not entirely to your liking, you became belligerent, power-wagging and now write threatening accusations against Snap-On Tools Corporation and the writer personally. You have my assurance that I do not weaken under duress nor do I think Snap-On Tools Corporation will wither under your accusations.

In my many years of experience in interference settlements, no one ever exacted more than concession of priority of the counts in interference, and your client has no right to threaten as I have repeatedly heard the expression from Mr. Fidler and Mr. Wacker "to unloose the dogs" if you do not get everything you ask for. A world is embroiled in a bloody and disastrous war to resist threats similar in kind and differing only in subject matter.

If error has been committed at the instance of witnesses produced in this interference, Snap-On Tools Corporation nor myself was aware of any wrongdoing and you know that. The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson. The only charge of wrongdoing thus far is at the instance of the self-confessed wrongdoer who doubtless is under even more duress than imposed upon the witnesses during the deposition and now being cast upon the writer and Snap-On Tools Corporation.

I am ready, able and willing to assume my responsibilities and those of Snap-On Tools Corporation. I cannot vouch for any other party in interest for reasons which you are well aware of and which Mr. Fidler acknowledged. On several occasions, Mr. Fidler has emphasized his view that my conduct in this case both before and after the declaration of the interference including the preparation

of the agreement between Snap-On Tools Corporation and Kenneth R. Larson of September 28, 1938 was the ordinary and expected thing which any lawyer confronted with the same circumstances would do.

Because a conflict of interests would likely result on account of this uncorroborated disclosure, I asked Mr. Larson to select an attorney on November 28, 1940 to represent him and the Precision Instrument Mfg. Co. I know that on November 29, 1940 Precision Instrument Mfg. Co. retained Mr. Hobbs of Haight, Goldstein and Hobbs. Mr. Hobbs then represented Mr. Larson and I am accurate in accepting service subject to that substitution in spite of what you say to the contrary. I had no other reason in asking Mr. Larson to select another attorney. If everything Mr. Thomasna has said could or will be proved, even then Larson is entitled to be defended by an attorney whether such be myself or some other attorney. I am not attempting to shift any responsibility. The retainer by Kenneth R. Larson and the Precision Instrument Mfg. Co. speaks for itself and neither Mr. Hobbs nor the writer is in a position to vary that particular situation in any way.

1920 As for the reporter, Mr. Fidler also acknowledged

that I had done everything possible to hasten the transcript. I have personally advanced money to the reporter, I have written the reporter a letter, I have called him on innumerable occasions and insisted upon speed and you are now going to examine him. His reasons for not producing the complete transcript will be made known to you directly and I am very much interested in hearing his testimony. You have my assurance that I will not contact the reporter nor converse with him with respect to his appearance on Monday. I merely notified him in the presence of Mr. Schmid that he would be subpoenaed pursuant to your notice to me. I have no further word from him and his statements under oath will be just as enlightening to me as they most likely will be to you. You state that he has not correctly transcribed certain testimony. That is new to me as I have received no complaints from your office, except for the alleged omission of a few improper slang words used by the witness Ford and I had nothing to do with that.

I reiterate with emphasis that my conduct in this entire proceeding from the very inception of the transactions between Mr. Larson and Snap-On Tools Corporation, was and is with the highest regard to honesty, ethics, and a

conscientious endeavor to protect those who seek my services. I shall be willing to have you investigate the writer's conduct with the utmost exactness and stand ready to appear before any judicial officer you may select to examine my conduct. Your unwarranted, indiscreet, and incriminating assertions do not arouse my anxiety one bit. Certainly, I objected to certain questions and I was dutybound to so object. You should have objected more often and more strenuously than I, and you know that too. Judge Barnes upheld certain objections and I should have certified other unwarranted cross-examination which was in abundance throughout the deposition.

I am not going to permit my client or clients to unwarrantedly succumb to duress in the most outlandish type of manifestations. I do not intend to withdraw as counsel for Snap-On Tools Corporation, the assignee of equitable title only, until its interests are determined by the Patent Office and if necessary by the courts. By the same token, I did not propose to represent Mr. Larson and Precision Instrument Mfg. Co. after November 28, 1940 when I openly stated in the conference with Messrs. Fidler, Wacker, Allen, Thomasna, Johnson and myself, that henceforth I would serve only as counsel for Snap-On Tools Corporation in view of the fact that there doubtless will develop a conflict of interests between it and Precision Instrument Mfg. Co. irregardless of whether Thomasna or Larson were telling the truth. I certainly do not regard Mr. Thomasna as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker. Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present.

1921 In the conduct of the proceeding thus far, there is every indication from the completed cross-examination that the witnesses were placed in a state of fear by the cross-examiner. They were always reminded they were under oath and warned to testify under fear. The cross-examiner was argumentative with the witnesses and from now on when and if I am present in behalf of Snap-On Tools Corporation on any further cross-examination or adverse examinations, I shall insist that the witnesses be interrogated without the slightest imposition of stress, argumentation, duress or fear manifestations that are not

necessary for seeking the truth. If fair conduct is not henceforth manifested on cross-examination or the examination of adverse witnesses, I assure you the deposition will be stopped and the matter again certified to the district court.

So far as I have proceeded with full knowledge of all the facts, I shall not attempt to divest myself of any responsibility. I trust that you will not divest yourself of any responsibility in certain other matters that have also come to my attention. Your letter is a challenge to me. It dares me to proceed to protect the interests of Snap-On Tools Corporation. The challenge is such that I would like, with the approval of Snap-On Tools Corporation and their general counsel to even proceed to protect the interests of Larson as such may appear. He still is entitled to counsel and I do not expect you will deny that the Bill of Rights and the Constitution of the United States afford him the privilege even if everything Thomasna has said should be taken as the gospel truth (which is quite a swallow for anyone).

As for your charge that Snap-On Tools Corporation is delaying the interference without justification, this is synonymous with the charge that a poor man has no rights because he is too poor to meet your flaunting might and that Snap-On Tools Corporation has no rights because it had no right to ask security for the performance of a contract with a poor man who has no substitute security. I say neither meaning is correct and I personally would rather fall representing a just cause rather than be subdued by duress and unwieldy might. The cause of Snap-On Tools Corporation is a just one and will be protected. I fear no one and you may be assured I do not even fear your accusations. It would be an easy and uncourageous thing for me to formally withdraw as attorney for Larson and leave him unprotected to your machinations as Mr. Hobbs just returned my substitute power of attorney, but it takes courage and character to stand behind a legally weak man in his hour of need. That is my answer until Mr. Larson can retain another attorney.

I feel that this explanation and reply is warranted by your rather unbecoming accusations contained in the letter of December 19, 1940. Your copy of that letter is being sent to Snap-On Tools Corporation and their general counsel for further action as they deem proper.

Yours very truly,

HCA:EM.

1922

DEFENDANTS' EXHIBIT NO. 77.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

IN THE UNITED STATES PATENT OFFICE,

Before the Examiner of Interferences.

Kenneth R. Larson, } Interference

Herman W. Zimmerman, } No. 77,565.

DEMAND FOR COPY OF TRANSCRIPT OF TESTIMONY TAKEN ON BEHALF OF THE PARTY LARSON AND NOTICE OF THE TAKING OF DEPOSITIONS.

To: Mr. Harry C. Alberts,
38 South Dearborn Street,
Chicago, Illinois.

Attorney for the party Larson:

The party Zimmerman hereby demands that the party Larson furnish to counsel for the party Zimmerman a complete and correct copy of the transcript of testimony taken on behalf of the party Larson in the above-entitled interference, including the remainder of the testimony of the witness Landen C. Hynes, the remainder of the testimony of the witness Kenneth R. Larson, and the whole of the testimony of the witnesses William J. Ladendorf, Clifford Whittaker and Walter Carlson. The party Zimmerman further demands that this complete and correct transcript be furnished to his counsel not later than 11:00 o'clock A. M., December 20, 1940.

The party Zimmerman also gives notice that the testimony of the following witnesses on behalf of the party Zimmerman will be taken at the offices of Davis, Lindsey, Smith & Shonts, 332 South Michigan Avenue, Chicago, Illinois, before Thomas B. Goodwill, 160 North LaSalle Street, Chicago, Illinois, a Notary Public in and for the County of Cook, State of Illinois, beginning at 9:30 o'clock A. M. December 23, 1940:

Mr. Thomas Rafferty,
10 North Clark Street,
Chicago, Illinois.

Mr. Herbert J. Schmid,
332 South Michigan Avenue,
Chicago, Illinois.

Mrs. Alice Larson,
1206 Center Street,
Des Plaines, Illinois.

Mr. R. E. Fidler,
332 South Michigan Avenue,
Chicago, Illinois.

Mrs. Addie Carlson,
660 Pearson Street,
Des Plaines, Illinois,

and others, timely notice with respect to whom will be given as the taking of testimony progresses. Testimony will proceed from day to day and you are invited to attend and cross-examine.

Attorneys for the Party Zimmerman.

Receipt of the above Demand for Copy of Transcript of Testimony Taken on Behalf of the Party Larson and Notice of the Taking of Depositions is hereby acknowledged this 18th day of December, 1940.

HARRY C. ALBERTS,

*Attorney for the Party Larson of Record
and substituted by M. K. Hobbs, November 28, 1940.*

1924 DEFENDANTS' EXHIBIT NO. 79.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

October 13, 1939.

Automotive Maintenance Machinery Co.,
2100 Commercial Avenue,
North Chicago, Illinois.
Attention Mr. Fred G. Wacker.

Dear Mr. Wacker:

I have just received from the Patent Office two notices declaring an interference, No. 77,565, between the Zimmerman Case "O" torque measuring wrench application and

a Larson (Snap-On) application, and also the Zimmerman Case "L" torque measuring wrench application and Larson. The notice papers that I received indicate that copies of the same were forwarded directly to you, so it will not be necessary for me to send you copies of them.

You will note that the preliminary statements are to be filed on or before November 13, 1939. I, therefore, suggest that Mr. Zimmerman get together all of his priority proofs respecting Cases "L" and "O" and go over the same with me at his earliest convenience.

I do not know Kenneth R. Larson, but it may be that he is your former employee who went to work for Snap-On and engaged in the manufacture of the infringing Snap-On tool at Des Plaines. If that is the case, a question of 1925 originality will probably arise between Larson and Mr. Zimmerman. That is, Larson may contend that the claimed features of the wrench disclosed in the Zimmerman applications were disclosed by Larson to Mr. Zimmerman. It seems to me that he would have to urge something like that in order to contest the interference, because surely Mr. Zimmerman had this invention (and probably had applications filed) prior to the time that Larson left you. In other words, if Larson's dates come after he left your employment (and I understand that you had developed the wrench before he left), then I don't see what possible chance he can have in this interference.

Counts 1 and 2 of the interference are taken from Zimmerman Case "L"; while Count 3 is taken from Case "O". I have just glanced through my records in a casual way, and they seem to indicate that the Case "O" wrench was designed and fully disclosed by about the 6th of February, 1938. A more definite check through my records may indicate an earlier date and your records, of course, may well show a much earlier date than that above referred to. I merely refer to the February date as a mark for Mr. Zimmerman to shoot at.

With respect to Case "L", my records indicate that it came along about the middle of 1937, or earlier. However, in connection with Case "O", any examination of the records has been only a casual one, and I may be able to establish an earlier date than that by my records, including

1926 my diary. I know Mr. Zimmerman made numerous drawings of various forms of wrenches of this general type and he can very readily get together the information

desired. In preparing the preliminary statement, we will have to determine not only when the first drawing was made, but when the first written description was made and when the invention was first disclosed to others. We will also have to determine when you first finished a full-sized device and successfully operated the same. In addition to the foregoing, we will want to determine whether or not there were any acts or facts outside of disclosure, first drawing, first description, etc., which, if proven, would establish conception of the invention at an earlier date than that which we will allege with respect to the matters above referred to. In other words, you will proceed in the preparation of this preliminary statement as in the statements taken care of within the last five or six months.

With kindest regards, I am

Very truly yours,

R. E. Fidler.

F.T.

Get dope on both early Snap-On and Ameco wrenches.

1927

DEFENDANTS' EXHIBIT NO. 80.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.,
North Chicago, Ill.)

November 9, 1939.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.

Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Larson vs. Zimmerman Interference.

I am sending you herewith copies of affidavits of Harold J. Tallett and Anna Melcer with respect to telephone conversations that they had with Snap-On-Tool Corp., and Precision Instrument Mfg. Co. respectively.

We are keeping the originals of these affidavits for our files and you may keep these copies if you wish.

I am also enclosing a Dun & Bradstreet statement on the Precision Instrument Mfg. Co. of Des Plaines, Illinois on which you will note that George Thomasma is shown as

vice-president. Please return this statement to us for our files when you have had an opportunity to look it over.

As I understand it you will secure the incorporation papers of the Precision Instrument Mfg. Co. to ascertain whether or not George Thomasma was one of the incorporators.

For your information we discharged George Thomasma on June 5, 1939 because of our suspicions and his inability to answer our questions either satisfactorily or convincingly. Likewise by his own admission he had taken tools out of our shop without our consent, which was in itself adequate cause for discharge.

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.;

By Fred G. Wacker,

Fred G. Wacker,

Pres.

fgw/ms.

3 enc.

1928

DEFENDANTS' EXHIBIT NO. 81.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts, Chicago.)

November 13, 1939.

Mr. Fred G. Wacker,
Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Dear Mr. Wacker:

Torque Measuring Wrench
Interference No. 77,565
Larson v. Zimmerman.

I wish to thank you for your letter of November 9th enclosing copies of affidavits by Harold J. Tallett and Anna Melcer respecting the present whereabouts of your former employee, George B. Thomasma. Your letter also enclosed a Dun & Bradstreet statement covering Precision Instrument Manufacturing Co., of Des Plaines.

The information contained in your letter and in the affidavits is, indeed, interesting. The facts indicate that the whole situation confronting your opponents in this inter-

ference is quite messy, and I will be somewhat surprised if they fight the matter. If they do contest the interference they surely will have a lot of explaining to do.

I suggest that you keep on the alert for every bit of information you can secure in this matter.

1929 The Dun & Bradstreet report is quite interesting and I am checking further to determine whether Thomasma was one of the incorporators of the Precision Instrument Manufacturing Co. The Dun & Bradstreet report is returned herewith, a copy of the same having been made for my file.

The next step in the Patent Office end of the matter should be approval of preliminary statements and the making of the Larson application accessible to us. I will keep you advised as the situation develops.

With kindest personal regards, I am

Very truly yours,

F-Cs.
Enc.

R. E. Fidler.

1930 DEFENDANTS' EXHIBIT NO. 81-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

The following report is furnished, at your request, under your Subscription Contract, in strict confidence, by Dun & Bradstreet, Inc., as your agents and employees, for your exclusive use as an aid in determining the advisability of granting credit or insurance, and for no other purpose.

Please note whether name, business and street address correspond with your inquiry.

Precision Instrument Mfg. Co. Mfr. Instr. Tools.

Des Plaines, Ill.,
Cook County,
1846 Miner Street.

Kenneth L. Larson, President.

George Thomasa, Vice-President.

Walter Carlson, Sec. & Treas.

Directors: The officers comprise the Board.

Of 779-784 2 September 5, 1939.

History.

This is an Illinois corporation, chartered during December 1938, with 1,000 shares of stock, par value \$10. As of

September 1, 1939, capital stock of \$8,200 was outstanding, and a Surplus of \$6,300 was indicated.

Kenneth L. Larson, is aged 32, married, a native of Missouri of Swedish descent. He was engaged in the auto supply business for a while, and previous to that was employed in that line.

Thomas is aged 37, married, and a native of Chicago, Illinois of Greek descent. He was employed as a machinist for several years, and more recently was engaged in the restaurant promotion work. He is a resident of Chicago, Illinois.

Walter Carlson is aged 48, and married, a native of Germany, now naturalized. Carlson engaged in the beauty shop line here about four years. He has also been in the same line at Arlington Heights and Barrington, Illinois. A beauty shop is conducted at Des Plaines, Illinois, and is managed by his wife.

Method of Operation.

The company sells a wrench which has an instrument on it for determining the foot pounds pressure or tension. It sells entire output to one Kenosha Wisconsin concern, which has over 500 salesmen selling to mechanics. Sales are for cash and on thirty day terms.

Space is occupied in a building of brick construction, and located on a side street. Four persons are employed.

Fire Hazard.

Rents the one story building, which is in good condition. A vacant factory building adjoins one side, and an auto wrecking concern the other. Premises are orderly.

Fire Record: No fires reported.

Statement.

From estimates of September 1, 1939:

Assets:		Liabilities:	
Cash in bank	\$ 400.00	Accts. Payable	\$ 1,000.00
Accts. Rec.	1,200.00	Sales lien	400.00
Merchandise	3,500.00		
		Total Current	1,400.00
Total Current	5,100.00	Capital Stock	8,200.00
Mach. & Fix.	3,300.00	Surplus	6,300.00
Eserow Acct.	1,500.00		
Patents	6,000.00	Total	15,900.00
Total Assets	15,900.00		

Net sales from January, 1939 to September 1939 \$12,000.

Monthly rent \$20.

* Sales lien covers part of equip. Aggregate monthly payments \$47.

(Signed) September 1, 1939 (by) Walter Carlson.
1931 The item Patents, \$6,000, would be an intangible asset.

It is reported that the company has met with a favorable trade response from the start. The officers are regarded as being capable.

Payments:

Locally, Payments are reported prompt.

Summary.

A comparatively new company, but affairs are in hand and payments are reported prompt.

9/5/39 (784)

X 31

1976

Defendants' Exhibit No. 82.

1932

DEFENDANTS' EXHIBIT NO. 82

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 21, 1939.

Mr. Fred G. Wacker,
Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Re: Interference No. 77,565—
Larson vs. Zimmerman.

Dear Mr. Wacker:

I have just received a letter from the Patent Office giving us the serial number and filing date of the Larson application. Larson filed October 1, 1938.—Serial No. 232,723. That is five months later than the filing of the Zimmerman Case "O" application, and over ten months after the filing of the Zimmerman Case "L" application.

Larson undoubtedly filed a preliminary statement because the Patent Office has set a motion period, which expires December 18, 1939, and has also set times for the taking of testimony.

I have ordered a copy of the Larson application and, as soon as I have had an opportunity to examine the same, I will advise whether we should file any motions during the motion period.

As suggested in your letter of November 9, we have investigated the incorporation papers of the Precision Instrument Company, and copy of a report dated November 14, 1938, covering the same is enclosed for your file.

You will note from this report that George B. Thomas was one of the incorporators. Kenneth R. Larsen and Walter Carlsen were other incorporators. In the corporation papers, Thomas's name is spelled "Thomas" and he signed that way. From the affidavit submitted with your letter of November 9, the name of this party appears to be George B. Thomasma. I wonder if we can determine definitely what his true name is. Maybe he was trying to cover up his identity by using an alias, so to speak, in the corporation matter. I also understand that Larson's name

is Larson in the application papers, but the corporation papers show it to be Larsen. This discrepancy may be significant.

In any event, we have pretty definite proof that Thomasa (or Thomasma) was conducting the other company while in your employ. Of course, we will have to get back of the date of incorporation to link Thomasa and Larson, because the Larson application was filed on October 1, 1938. I believe that you have the evidence of other of your employees to the effect that, long before October 1, 1938, Thomasa was meeting Larson, was quite friendly with him and was carrying on somewhat mysteriously. Any information you may be able to gather in that respect will be helpful in the event that this matter comes to a showdown.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F.T.

Enclosure.

1934. DEFENDANTS' EXHIBIT NO. 82-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

11-14-38.

Precision Instrument Manufacturing Company

Certificate of Incorporation dated 12-6-38 and filed 12-6-38, and recorded 12-8-38.

Incorporators:

Kenneth R. Larsen, 1206 Center St., Desplaines.

George B. Thomasa, Potter Road, R. F. D., Desplaines.

Walter Carlsen, 660 N. Pearson St., Desplaines.

Address of initial registered office is 1206 Center St., Desplaines, and name of initial registered agent is Kenneth R. Larsen.

Article 4.

The purpose or purposes for which the corporation is organized are:

for the purpose of manufacturing and selling tension wrenches under U. S. Patent Application No. 232,723, and

to manufacture, construct and deal in machinery, appliances and plants of every nature, kind and description whatsoever. To acquire by purchase, lease or otherwise, and to manufacture and construct machines and tools of any kind and character. To apply for or purchase or otherwise acquire, and to grant licenses for the use of, to sell, assign or otherwise deal in and use patents, patent rights, privileges, licenses, trade-marks, trade names, devices, and improved or secret processes of every sort or description necessary and incidental to those purposes; and also to carry on a general manufacturing, wholesale and retail merchandise business."

1935 Article 5.

Corporation authorized to issue 1000 shares divided into one class at \$10.00 per share.

Article 6.

The capital and number of shares to be issued by corporation before it shall commence business and the consideration to be received by the corporation therefor are:

Class of Shares	Number of Shares	Consideration
Capital	760	\$7600.00

Article 8.

Estimated value of all corporate property in Illinois and owned by corporation during next year (1939) is \$10,000.00.

Estimated gross business is \$24,000.00.

Signed by } Kenneth R. Larsen.
 as incorporators } Walter Carlsen.
 George B. Thomas.

Oath and acknowledgment signed on 12-1-38.

Certificate of Incorporation was mailed to

A. L. Sengstock,
 311 First National Bank Bldg.
 Desplaines, Ill.

Doc. No. 12246425.

Recorded in Book 1193—Page 309.

1936

DEFENDANTS' EXHIBIT NO. 83.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.—
North Chicago, Ill.)

November 24, 1939.

Davis, Lindsey, Smith & Shonts,
332 S. Michigan,
Chicago, Illinois.

Attention: Mr. R. E. Fidler.

Dear Mr. Fidler:

Re: Interference No. 77,565.

Larson vs. Zimmerman.

This will acknowledge receipt of your letter of November 21 under the above subject.

We have checked through our Social Security records and find that Thomasma was listed as George Ben Thomasma. These records were typewritten from pencil blanks filled in by each of the men and we do not have the original from which this record was taken. We do, however, have many of his salary checks endorsed "Geo. B. Thomasma".

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.,

By Fred G. Wacker,

Fred G. Wacker,

Pres.

fgw/s.

1937

DEFENDANTS' EXHIBIT NO. 84

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

June 4, 1940.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention: Mr. Fred G. Wacker, Pres.

Dear Mr. Wacker:

Re: Larson v. Zimmerman.

In your letter of June 3rd you ask "What makes you feel that the interference might not go forward?" Any answer to this question must necessarily be speculative.

I view the situation in the following manner. Larson is the junior party, that is, he filed his application about six months after the Zimmerman case and the burden of proof in this interference is on him. He knows the filing date of the Zimmerman application and if he can not prove a date of invention a substantial time prior to your filing date he might not be inclined to go to the expense of taking testimony in an attempt to prove his case. An interference, by the time it reaches the stage of investigation for the purpose of taking testimony and the actual taking of testimony, becomes somewhat expensive. If the chances appear to be against the junior party (Larson) winning, he might decide not to contest the matter. Of course,

Snap-On owns the application and will probably be 1938 the one to stand the expense but even at that they might not be inclined to fight the matter where they do not see their way clear to success. Snap-On as well as Larson certainly knows the factual situation behind this interference and, if I am correctly informed as to that situation, I can not see how they could hope to win. Obviously, they did not think they were the prior inventors of subject matter common between their wrench and yours. Otherwise, in filing their application they would have inserted claims which might read on your construction. There wasn't a single claim in the Larson case broad enough to read on your wrench until the Examiner saw fit to declare

this interference. Another thing that might indicate that they do not take this interference seriously is the slipshod manner in which their attorney has handled the interference. He failed to file a brief in answer to our motion to amend and he slipped up in making a claim for purpose of interference and I don't see how anyone can take the interference seriously and do that. Therefore, it is not at all unlikely that, if Snap-On carefully considers the entire situation, they might decide not to fight the interference.

As the matter now stands the interference has to be reformed and that will require the filing of new preliminary statements as to at least two claims. After that has been done the Patent Office will set times for taking testimony. Larson has to take his testimony first, and if he does

not take any testimony we can then file an affidavit 1939 stating that fact and ask that judgment be rendered on the record against him. Even though the interference took that course the interference might well drag on for a period of six or eight months. If they should decide to fight the matter and, therefore, take testimony the interference might well drag along for a period of two or three years, depending upon the extent to which they may want to fight. This is the best that I can do as the length of time that it will take to wind up the interference.

Of course, Snap-On might be endeavoring to delay as long as possible the issuance of a patent to you. If that is their plan, they will do everything possible to prolong the interference, but I assure you that if this interference does proceed I am going to take every step possible to avoid delay, unless, of course, you wish to take a different course.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F.C.

1082

Defendants' Exhibit No. 85.

1940

DEFENDANTS' EXHIBIT NO. 85.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

July 22, 1940.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565.

I have just been notified by the Patent Office that the following times for taking testimony have been set:

Testimony in chief of Larson to close September 18, 1940.

Testimony of Zimmerman to close October 18, 1940.

Rebuttal testimony of Larson to close November 2, 1940.

Final hearing January 17, 1941, at 11: a. m.

There isn't anything for us to do in this matter except to wait and see whether or not Larson takes testimony. If he takes testimony, it may be necessary for us to also take testimony. As I have previously said, though, it will be a surprise to me if Larson takes testimony.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler,

N. J.

F. J.

1941 DEFENDANTS' EXHIBIT NO. 86.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Automotive Maintenance Machinery Co.—
North Chicago, Ill.)

July 24, 1940.

Davis, Lindsey, Smith & Shonts
332 S. Michigan—
Chicago, Illinois

Attention: Mr. R. E. Fidler

Dear Mr. Fidler: °

Re: Larson v. Zimmerman

Interference No. 77,565.

Replying to your letter of July 22 under the above subject I am pleased to note that this interference is coming to a head and that the patent office has established dates for taking testimony as indicated in your letter.

I hope you are right in your thought that you will be surprised if Larson takes testimony.

With kindest regards,

Very truly yours,

Automotive Maintenance Machinery Co.,

Fred G. Wacker,

By Fred G. Wacker,

FGS.

fgw/ms

1942

DEFENDANTS' EXHIBIT NO. 87.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

Aug. 7, 1940. Discussed with Fidler and asked him to make an investigation. F. G. W.

August 5, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565

In view of the fact that this interference has reached the stage where we are entitled to see Larson's preliminary statement, I had our Washington associates secure a copy of such statement, and a copy thereof is enclosed for your information.

This preliminary statement was one of the most surprising things that I have come across in a long time. You will note that Larson alleges dates that antedate Zimmerman's dates by about three years. I just can't believe it. There must be something wrong with this picture. For your convenience, I set forth the Larson-Zimmerman dates in comparison as follows:

1943

Zimmerman	Conception	Larson
May 28, 1937	Disclosure	July 15, 1934
May 28, 1937	Drawing	Sept. 12, 1934
May 28, 1937	Description	May 20, 1936
Sept. 10, 1937	Reduction to Practice	Sept. 20, 1938
Aug. 28, 1937	Filed	Sept. 10, 1934
Nov. 22, 1937		Oct. 1, 1938

It is interesting to note that Larson will contend that he conceived the invention on or about July 15, 1934, such act being based upon the making of a pattern. Even though he alleges that early date for conception, it was not until

about two years later (May 20, 1936) that he made the first drawing. Isn't it quite customary to have a drawing in order to make a pattern? Do you see anything wrong with this part of the picture?

Also, he alleges the successful operation of a wrench of this kind on September 10, 1934, but he didn't disclose it to anyone until September 12, 1934. This is, indeed, unusual and I am now wondering whether he can actually prove a reduction to practice.

You will also note that it was more than four years from the time he alleges reduction to practice that Larson filed his application. This, of course, raises a question as to what became of the wrench that was reduced to practice and whether or not it went into public use so that it would constitute a bar to the grant of a patent on the Larson application.

1944. This wide gap in dates presents still another question,—namely, whether or not the thing alleged to have been a reduction to practice was nothing more than an abandoned experiment. If Larson did something back in 1934 and then did nothing further with it until he was prompted to do so by your activities three or four years later, we might be in a position to show that his early work was nothing more than an abandoned experiment.

A question of diligence may also be involved,—particularly if we can show that Larson's early work was not a reduction to practice, assuming, of course, that he did conceive something back in 1934. Naturally the foregoing remarks are merely speculative because we do not know the nature of Larson's proofs. We know some of the extraneous facts, including the activities of your former employee, and, in the light of them, I yet cannot bring myself to believe that Larson had this wrench three or four years before you developed it.

These situations are, sometimes, most difficult to handle. They require very careful and thorough investigation. If there is something wrong with the Larson picture, it may require such an investigation to learn the true facts. Such an investigation might well begin with the obtaining of a complete history of your former employee's activities. There are also certain facts respecting Larson's activities that we ought to know in order to be able to intelligently cross-examine.

1945. When you have an opportunity, it might be well for us to discuss this phase of the matter. I expect

to be away the last two weeks of August and if you want to discuss the matter with me before that time, I will be glad to do so.

Very truly yours,

R. E. Fidler.

Enclosure

1946

DEFENDANTS' EXHIBIT NO. 88.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

August 16, 1940.

Mr. Fred G. Wacker
Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Dear Mr. Wacker:

Larson vs. Zimmerman
Interference No. 77,565

You will note by referring to the Larson preliminary statement submitted with my letter of August 5, that it deals only with the substituted counts 1 and 2 which grew out of your motion to add counts in the interference. The interference involves an additional count 3, the dates with respect to which we are entitled to see.

The Patent Office had closed against us the original statement filed by Larson and, for that reason, we were not previously permitted to see Larson's dates with respect to count 3 which is based on the disclosure of Case O. I wrote to Mr. Glemser about this matter and he was finally able to secure a copy of Larson's original preliminary statement, a copy of which is enclosed for your information. I also enclose a copy of Mr. Glemser's letter transmitting the preliminary statement in question.

You will be interesting in reading Mr. Glemser's letter because it indicates that he, too, has some doubts with respect to the dates alleged by Larson.

Very truly yours,

R. E. Fidler.

F.Cs.
Enc.

1948 DEFENDANTS' EXHIBIT NO. 89.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

Sept. 21, 1940. Discussed with Mr. Fidler by phone.
F. G. W.

September 20, 1940.

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois
Attention of Mr. Fred G. Wacker
Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565

While I was out of the city a few days ago my secretary informed you that Larson's attorney was asking for a thirty day extension of time for taking the Larson testimony. As I understand it, you, at that time, expressed the thought that you were not in favor of giving any extension but that, if we thought that you should consent to some additional time, because Larson could get it anyway if he went to the Patent Office, you would be guided by our judgment in the matter.

Accordingly, my secretary called Mr. Alberts, Larson's attorney, and told him that while you were not at first in favor of any extension of time you finally consented to ten or fifteen days. Alberts then wanted twenty days but this was refused and a stipulation was finally entered into giving him a fifteen day extension of time. This means that Larson must begin the taking of his testimony and must complete the same by October 3rd.

1949 I have some very interesting things to tell you about this interference and I hope that you can get in to see me sometime within the very near future so that I can tell you what it is all about.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F. J.

1950

DEFENDANTS' EXHIBIT NO. 90.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

October 19, 1940.

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference 77,565

This morning I was somewhat surprised to receive from Larson's attorney a notice of taking testimony in the above matter. A copy of such notice is enclosed.

You will note that they have deferred the beginning of their testimony until the very last day, October 24th. I have investigated this phase of the matter and I find that there isn't anything that I can do about it. If they start on October 24th and continue diligently, the Patent Office will receive their testimony even though it extends beyond the time now set. Of course, if they should delay and attempt to postpone, that's another matter. I feel that the Patent Office may listen to us and apply the rule strictly against Larson should an attempt of that kind be made.

According to this notice, I will appear at the office of Larson's attorney next Thursday at 10:00 A. M. for the purpose of cross-examining the witnesses. If you wish to be present, that is your privilege, and I will be very glad to have you there.

Very truly yours,

R. E. Fidler.

F.J.

Enclosure

1952

DEFENDANTS' EXHIBIT NO. 91.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 4, 1940.

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565

During our conference last Friday you left with me the following files:

1. File covering the sale to K & L Motor Rebuilders, Des Plaines, Illinois, of an AMMCO oversized piston fixture in October, 1937.

2. File covering sale to K & L Motor Rebuilders, Des Plaines, Illinois, of a piston pin hole boring machine in May, 1936.

You also left with me a letter dated October 31, 1940, signed by Mr. McFarland and Mr. Stroditz, two of your employees, respecting previous contacts between Mr. Thomasina and Mr. Larson.

These matters will be retained in my file until the interference matter has been disposed of.

Very truly yours,

R. E. Fidler

F:J

1953 DEFENDANTS' EXHIBIT NO. 91-A.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

October 31, 1940.

Mr. R. E. Fidler
Davis, Lindsey, Smith & Shonts
332 S. Michigan
Chicago, Illinois

Dear Sir:

In the spring of 1939 we rode to the factory of Automotive Maintenance Machinery Co. in North Chicago, Illinois with George Thomasma in his car on an average of about five days per week. We parked our own cars at Thomasma's home in Park Ridge from which we drove back and forth into Chicago. On a number of occasions, probably a dozen or more, upon returning to Thomasma's home from North Chicago, he was met there by Mr. Larson.

On several occasions Thomasma took us to the K & L Auto Supply in Des Plaines to purchase auto parts. Larson and his partner operated the supply house and sold Thomasma the parts which we bought from him.

Very truly yours,

Howard Stroditz,
Chas. McFarland.

1954 DEFENDANTS' EXHIBIT NO. 92.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

November 23, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois
Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman
Interference No. 77,565

After talking to you yesterday about a handwriting expert, I tried to get in touch with Mrs. Keeler but was

unable to do so. I could get no information as to when she would be available for a conference with me.

In view of the fact that I want the opinion of an expert before the conference next Thursday, I got in touch with a general attorney here in Chicago who suggested that I communicate with a Mr. Rudolph B. Salmon, who enjoys a rather high reputation with respect to handwriting matters. Accordingly, I contacted Mr. Salmon and he agreed to take the matter in hand. I am getting the necessary materials to him this coming Monday, and he has promised a report before Thursday.

While I was in conference with Mr. Salmon he made a cursory examination of the drawing in question, in comparison with another drawing made by Thomasma, and he said that there were many items of similarity which indicated that both drawings were made by the same man. He, of course, would not express himself finally in the matter until he has made an examination of the kind usually made by handwriting experts.

Very truly yours,

R. E. Fidler.

F:J

1956

DEFENDANTS' EXHIBIT NO. 93.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shouts—Chicago.)

(Handwriting in margin) Will meet at 9 A. M. unless I advise Allen to the contrary.

November 23, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565

I called Mr. Alberts, Larson's attorney, this morning and told him that next Thursday morning would be satisfactory to you for the conference relating to evidence taken in the above interference. Mr. Alberts said that Mr.

Johnson would arrive here from the East at about 9:45 A. M. on that day and that they would be in my office between 10:15 and 10:30. If anything should come up to change the plans, I will get in touch with you immediately.

I suggest that you come in next Thursday morning early enough to preliminarily discuss matters to be taken up at the conference. I understand that Mr. Allen will be present, if he is in town. I think he should be here, by all means, if he can arrange it.

I have made arrangements for both Mr. and Mrs. Thomasma to be in our office that morning. Whether 1957 or not I will call them into the conference, will depend upon developments at the conference.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F.J.

1958 DEFENDANTS' EXHIBIT NO. 94.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

(Handwriting in margin) We to get signed copy of re-assignment from Snap-On to Precision. Notification by Snap-On to their customers.

December 21, 1940

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,565

Confirming my last telephone conversation with you yesterday,—

All parties are in agreement respecting settlement of this interference. I will not go into detail herein regarding matters leading up to the settlement because I believe you are as familiar with them as I am.

I have prepared two agreements, one between you and

Snap-On and one between you and Precision and Larson, covering the matters agreed upon. A duplicate-original and one copy of each of these agreements are enclosed. I also enclose the original of the Larson-Precision agreement. In view of the fact that these agreements cover the matter as agreed to by you over the telephone, I feel that you will find both agreements in satisfactory form. Of course, if there is anything that you see that is not correct, please do not hesitate to call me at once.

1959 The enclosed duplicate-original of each agreement, as well as the original of the Larson-Precision agreement (bound copies) should be executed by you and returned to me immediately so that it will be in my hands the first thing next Tuesday morning. You will note that you are to sign as President and that the seal of your company must be applied. You will also note that you must acknowledge the execution of the instruments. I have indicated the places where you should sign.

I have also delivered the original and a copy of the Snap-On agreement to Mr. Alberts for transmission to Snap-On today. Mr. Alberts expects Snap-On to sign the agreement Monday so that it will be in his hands early Tuesday morning. In finally closing the matter, we will exchange signed copies.

I have also prepared an assignment covering transfer of the Larson application to you as well as a concession of priority from Larson to Zimmerman. I am not now enclosing copies of these papers but will do so as soon as the matter is fully taken care of.

With kindest personal regards, I am
Very truly yours,

E. E. Fidler.

F:J
Enclosures

1094

Defendants' Exhibit No. 95.

1960

DEFENDANTS' EXHIBIT NO. 95.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts,
Chicago.)

Via Registered Mail

December 26, 1940

Automotive Maintenance Machinery Co.

2100 Commonwealth Avenue

North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman

Interference No. 77,563

Confirming our telephone conversation of a few moments ago,—

The following papers have been fully executed in settlement of the above interference:

1. Agreement between Snap-On and Automotive.
2. Agreement between Automotive, Precision and Larson.
3. Assignment of Larson interfering application Serial No. 232,723 by Snap-On to Precision and Larson.
4. Assignment of the Larson interfering application Serial No. 232,723 by Precision and Larson to Automotive.
5. Concession of Priority by Larson to Zimmerman.
6. Mutual release between Precision, Larson and Thomasma.

All of the foregoing signed documents, excepting signed copies of the contracts delivered to Precision, Snap-On and Larson, are now in my hands and I enclose the following documents for your files:

- 1961 1. The Snap-on-Automotive agreement.

Memo: The signed original and a duplicate original are enclosed. I suggest that you sign the original exactly like you signed Snap-On's copy (which was delivered to Snap-On) in order that your file may be complete. You are to retain both of these signed copies. Although the duplicate-original is superfluous, I would preserve it anyway.

2. The original and duplicate-original of the Automotive-Precision-Larson agreement.

Memo: You will note on page 4 of both the original and duplicate-original that the words "and sizes", in line 2, and "of each size", in line 3, have been stricken. Mr. Hobbs and I agreed to this over the telephone the other day, and you gave your approval to me over the telephone this morning, at which time I explained the reason. It is practically impossible for Precision, with their bookkeeping methods, to specify particular sizes as it is customary for Snap-On to change orders already given with respect to particular sizes.

You will note that Mr. Larson has initialed this change in both of the signed copies. You should do likewise and then return to me the signed duplicate-original which will be delivered to Precision and Larson.

3. The Precision-Larson-Thomasma mutual release that I have is being delivered to Mr. Thomasma. However, a photostatic copy of the same is enclosed for your information and file. I will likewise preserve a copy for my file.

4. I am retaining the original assignments and concession of priority for they must be transmitted to the Patent Office. I am enclosing, though, copies of these showing exactly how and when they were signed.

Memo: I may add that the Snap-On assignment does not have the kind of an acknowledgment clause that I want and a new one will be given to us. The assignment in its present form will, however, serve our immediate needs.

In completing the deal, Mr. Thomasma turned over to me his Precision stock certificate, the same being assigned in blank. This stock certificate was delivered to Mr. 1962 Hobbs, attorney for Larson, at the time of exchange of settlement papers on December 24th. At that same time, Mr. Hobbs delivered to me a check from Snap-On Tools Corporation to you for \$500.00, which is the consideration mentioned in the Automotive-Precision-Larson agreement. As you know, this check was to be turned over to Mr. Thomasma for the delivery of his stock to me and, in turn, Precision, and to complete that phase of the deal, I delivered to Mr. Thomasma our firm check for \$500.00. I now enclose the check from Snap-On to Automotive and I would appreciate it if you would either endorse the same so that it will be payable to our firm or give me a new

check for our firm. In talking to you over the telephone this morning I discussed this matter and you suggested that I send this particular check on to you and that you would take care of the same right away.

The next thing to be done in this matter is the recording of the above assignments, following by the filing of the Concession of Priority. As soon as that is taken care of, we will endeavor to get Case "L", which is directed to broad subject matter, allowed immediately. My thought is to get this done so that the final fee could be paid by next Thursday. If this could be done, the patent should issue the third Tuesday from January 7th, 1941, or January 28, 1941.

The statements called for by the above agreements will come forward within the next day or so. I will send them on to you as soon as they are received.

With kindest personal regards, I am

Very truly yours,

R. E. Fidler.

F.J.

Enclosures

1963

DEPENDANTS' EXHIBIT NO. 96.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 26, 1940

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Larson v. Zimmerman Interference No. 77,565

For your information and file, I enclose herewith a copy of a letter which I have just written to Mr. Raftery, the reporter who took the Larson testimony.

Very truly yours,

F.J.

Enclosure

1964

DEFENDANTS' EXHIBIT NO. 97.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shouts—Chicago.)

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Larson v. Zimmerman Interference No. 77,565

I wish to thank you for your very kind letter of December 27th respecting the above matter and returning the initialed duplicate-original Automotive-Precision-Larson agreement and the Snap-On check for \$500.00.

The duplicate-original agreement above referred to has been forwarded to Mr. Hobbs, attorney for Precision and Larson.

I have not yet taken the steps necessary to terminate the interference because I cannot do that until I receive a revised assignment from Snap-On to Precision and Larson. As soon as I get such assignment the necessary steps will be taken. Any action that I take will necessarily include careful review of all the applications, including the Larson application which you now own, to determine whether

or not there are additional claims that we might secure for your further protection. That, as you know, is a rather ticklish proposition because we do not want to do anything that might cause the Examiner to react against us with respect to claims already allowed.

We are all much relieved due to the fact that this most unpleasant situation is behind us. I want you to know that we all very greatly appreciate your wholehearted cooperation which was necessary in order that we might attain the end sought. I appreciate that more expense was involved than we originally anticipated but it was entirely unavoidable and I assure you, as I will explain when I next see you, that the expense incurred was the very minimum under the circumstances.

I understand that you expect to be in Chicago within the next few days at which time you will be in to see me. I do not think that you should delay that visit any longer.

than absolutely necessary because there are some matters that I want to review with you which may be of some assistance in your further activities.

Very truly yours,

F. J.

R. E. Fidler

1966

DEFENDANTS' EXHIBIT NO. 98.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

January 24, 1941

Automotive Maintenance Machinery Co.
2100 Commonwealth Avenue
North Chicago, Illinois

Attention of Mr. Fred G. Wacker

Dear Mr. Wacker:

Re: Interference No. 77,565 Settlement Matters

Confirming our telephone conversation of this morning respecting the above matter and referring to your letter of January 23rd,—

So far as Precision is concerned, the agreement was revised so as not to call for sizes of wrenches. However, the Snap-On agreement was not so changed. As you have noted, the Snap-On statement of January 8th does not refer to sizes, whereas it should do so. I have, therefore, written to Mr. Alberts requesting that a complete statement complying with the agreement be furnished. A copy of my letter is enclosed.

In writing to Mr. Alberts I also refer to his letter of January 13th which is in reply to my letter of January 10th, a copy of which was sent to you with my letter of January 10th. I note that I inadvertently overlooked sending you a copy of Mr. Alberts' letter of January 13th 1967 and such copy is now enclosed. This letter clearly indicates the attitude of Snap-On,—always wanting something without giving anything in return. You will note that Alberts requests that I inform him of any changes that we might make in claims already allowed in the Zimmerman applications as well as any additional claims that might be allowed. In answering this I say that I will be

glad to so inform him, assuming, though, that he will keep me fully informed respecting changes in design made by Snap-On for the purpose of evading the Zimmerman claims, or otherwise. In other words, if they plan to keep us in the dark respecting changes in design I see no reason why we should keep them informed respecting the prosecution of the applications. You will note that that question was sidetracked by Mr. Alberts in his letter of January 13th.

With kindest personal regards, I am

Very truly yours,

FJ

R. E. Fidler

Enclosures

1968

DEFENDANTS' EXHIBIT NO. 99

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Davis, Lindsey, Smith & Shonts—Chicago.)

January 31, 1941.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Interference No. 77,565.

Automotive Snap-On Settlement Agreement.

I enclose a copy of Mr. Alberts' letter of January 30th enclosing a revised Snap-On statement as to wrenches on order and undelivered, which statement is intended to conform to the settlement agreement. The original of the revised statement is enclosed. You will note that it includes reference to sizes and the number of each size yet due on order.

You will note the second paragraph of Mr. Alberts' letter respecting the substitution of sizes. I do not see that any difficulties should arise in this respect but the record should be clarified for once and for all as to this phase of the matter.

You will remember that the agreement originally submitted to Precision specified that their statement should also include sizes and they took the position that they could

not specify sizes because Snap-On had the right; with 1969 respect to any particular order given to Precision, to change the order as to the size of wrench required. For that reason, we then struck from the Precision agreement reference to sizes so far as the statement was concerned. Upon doing this Mr. Alberts called me and wanted to do the same thing with respect to the Snap-On agreement, but I refused because they were in a position to not only state the wrenches on order but the sizes of wrenches on order and the sizes of wrenches yet to be delivered. The present statement gives that information.

I did not discuss the matter with Mr. Alberts from the standpoint of giving his client any right with respect to exchange of wrenches of different capacities to suit the individual needs of customers. They had on order at that time certain wrenches. They could not take any future orders for wrenches coming within the scope of the agreement and, if it is Mr. Alberts' thought that they have the right to take additional orders and substitute them for sizes called for in orders already taken as of the time of the settlement, he is entirely wrong. The agreement particularly provides that they shall not take any future orders for wrenches coming within the scope of the agreement. Now, if they have certain orders already on hand calling for certain sizes and they want to juggle those sizes around with respect to particular orders, I do not see that we can object to that, but they cannot take any new orders for different size wrenches for customers already having orders on hand and substitute such sizes for sizes called for by the orders on hand. Certainly, no leeway was 1970 given to Precision in this respect and Snap-On cannot find any escape in that direction because of anything that happened with respect to Precision so far as the requirements of the settlement are concerned.

I would like you to give some thought to this matter and let me know your viewpoint immediately. I want to write Mr. Alberts without delay for the purpose of avoiding misunderstanding in the future.

With kindest personal regards, I am,

Very truly yours,

F. J.

R. E. Fidler.

P.S.: I copy of the enclosed statement is being retained in my file for future reference.

R. E. F.

1971 DEFENDANTS' EXHIBIT NO. 100.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

June 27, 1941.

Automotive Maintenance Machinery Co.,
2100 Commonwealth Avenue,
North Chicago, Illinois.

Attention of Mr. Fred G. Wacker.

Dear Mr. Wacker:

Re: Precision—Snap-On Torque
Wrench Matter.

I wish to acknowledge receipt of the copy of your letter of June 25th to Mr. Thomasma inquiring as to the present status of Precision.

In view of the fact that about six months' time has passed since you entered into agreements with Precision and Snap-On respecting the clean-up of wrench orders, I believe it would be in order for you to write to Snap-On and Precision and ask them to inform you directly as to the status of the matter in question.

Mrs. Thomasma told me the other day that Precision is still manufacturing some wrenches. I cannot say that her information is accurate but it might well be that, due to their inability to secure proper materials, they have not been able to complete all orders. Six months is a long time, though, and I would not hesitate to inquire of these people as to whether or not the orders have been completed.

Very truly yours,

F. J.

1972 DEFENDANTS' EXHIBIT NO. 101.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

November 29, 1940.

Raymond E. Fidler, Esq.,
332 South Michigan Ave.,
Chicago, Illinois.

Dear Mr. Fidler:

We have been engaged by Precision Instrument Manufacturing Company of Des Plaines to represent it and its

inventor's interest in what we understand is an interference in the Patent Office between the parties Zimmerman and Larson. We have some understanding of the circumstances and situation which has developed and would like to confer with you about the matter at your early convenience—by Monday if possible.

Will you please phone to me upon receipt of this letter so that we can arrange a conference.

Yours very truly,

MKH:FS.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

December 6, 1940.

Mr. George Thomasina
Potter Road
Park Ridge, Illinois

Dear Sir:

We represent Precision Instrument Manufacturing Company located at Des Plaines, Illinois. You appear upon the records of the company to hold a certificate or certificates for 260 shares of the stock of the company. The stock is unlawfully held by you. Demand is therefore made upon you on behalf of the company that you forthwith surrender, for cancellation, your certificate or certificates of stock. If this matter can be treated and cared for amicably, litigation will be avoided. No transfer by you of the stock will be recognized by the company.

Yours very truly,

Haight, Goldstein & Hobbs,

By

MKH:FS

1974 DEFENDANTS' EXHIBIT NO. 103.

(Filed Aug. 13, 1943. Roy H. Johnson, Clerk.)

(Letterhead of Harry C. Alberts—Chicago.)

November 19, 1940.

Mr. Thomas L. Raftery
10 North Clark Street
Chicago, Illinois

Re: Larson vs. Zimmerman—Interference No. 77565
File 11484

Dear Sir:

I have been absent from the city for over a week and had expected that the transcript in the above entitled case would be completed long before this time. Even considering everything that was involved in this deposition and perhaps your present large volume of other work, nevertheless I have never received such poor service in years past from other reporters. I personally do not feel there is any excuse for this delay and am rather certain that Mr. Fidler is being seriously inconvenienced on that account.

Contrary to my usual policy, I have given you three advances in different amounts and committed myself to pay Mr. Fidler \$20.00 which he erroneously advanced to you. In view of these special accommodations I have made to you, I would think that you would make a special effort to promptly complete this transcript rather than extent it.

I request, therefore, that you lay all other work aside and promptly complete this transcript in that it will take several days to read over the testimony and make stenographic corrections which appeared in one portion of the transcript delivered some time ago and there doubtless will be other corrections.

Consequently, time is of the essence. Will you, therefore comply with my request and promptly complete this transcript.

Yours very truly,

Harry C. Alberts.

HCA:EM
Cc: Mr. R. E. Fidler

1975 And on, to wit, the 18th day of June, 1943 came the Plaintiff by its attorneys and submitted its certain Proposed Findings of Fact and Conclusions of Law in words and figures following, to wit:

1976 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382)

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidated of Civil Actions No. 4382 and No. 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the court having heard testimony herein for nine days, and having heard argument of counsel, and having delivered an oral opinion herein on May 21, 1943, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff against Precision Instrument Manufacturing Company (called "Precision") and Larson for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792, Zimmerman No. 2,283,888 and Zimmerman Reissue No. 22,219 (formerly No. 2,269,503), all for Torque Wrenches, said infringement being charged to be in violation of a certain contract (Defendants' Exhibit 4) entered into between the parties hereto on December 20,

1940 in settlement of Patent Office Interference (No. 1977 77,565), involving the three applications for the respective patents sued upon, and particularly in violation of Precision's and Larson's covenants in said contract not to infringe upon or contest the validity of said patents.

2. Among other defenses, Precision and Larson pleaded that during the Interference proceedings the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 27,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7 and 8), which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were

aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contract (Defendants' Exhibit 4) in suit, payment to plaintiff of the sum of \$500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and that plaintiff did thereafter suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering said contract null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, for declaratory judgment upon the same patents and a somewhat similar contract (Defendants' Exhibit 5), dated December 29, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded and also that Automotive Maintenance Machinery Co. (called "Automotive") had made threats 1978 of prosecution against Snap-On Tools Corporation (called "Snap-On") and its attorney. Automotive, respondent, in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph 1 hereof and violation of said Defendants' Exhibit 5 contract.

4. On April 20, 1943 the court entered an order that the patent issues raised by the pleadings in this cause (consolidated) "be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 [5] and 6 [4] now set for May 10, 1943", and these findings of fact and conclusions of law are entered upon the conclusion of that separate trial and are for the most part applicable to both Civil Actions.

5. On November 22, 1937 Zimmerman, an employee of Automotive, filed an application for patent in the United States Patent Office which application was assigned to Automotive and issued on May 19, 1942 as said patent No. 2,283,888. On May 31, 1938, Zimmerman filed an application for patent in the United States Patent Office and assigned the same to Automotive and the same issued on January 13, 1942 as said patent No. 2,269,503, which was reissued as Reissue No. 22,219.

6. On October 1, 1938, Larson, one of the defendants here, filed an application in the United States Patent Office and said application was assigned to Snap-On. The application later issued into said patent No. 2,279,792, dated April 14, 1942, with Automotive as assignee.

1979 7. When the Larson application was filed the claims were confined to a certain so-called "tailpiece" (i. e. means connected to the free extremity of the torque resisting beam) for operating the gauge and such claims did not read on the disclosure of either of the pending Zimmerman applications. The Patent Office suggested to Larson certain claims from the Zimmerman applications, the claims being of sufficiently broad scope to the wrench generally as to read on Larson's disclosure as well as on the respective Zimmerman disclosure. Larson made these claims and on October 11, 1939 the Patent Office declared Interference 77,565 between the Larson application on the one hand and the Zimmerman applications on the other and the subject matter of the Interference involved and the three broader Zimmerman claims which had been suggested to Larson. Then still broader claims were substituted for certain of the claims constituting the counts of the Interference, as declared.

8. Larson being the junior party in the Interference was required by the Patent Office Rules to take his testimony first and that testimony on the issue of priority of invention was taken on his behalf between October 24th and November 4, 1940, inclusive. The depositions of Larson and eight corroborating witnesses were taken on Larson's behalf and sketches, drawings, invoices, patterns and physical torque wrenches, and parts thereof, were offered in evidence as exhibits in support of the oral testimony.

9. In 1937 and 1938, Automotive was manufacturing wrenches embodying the Zimmerman structures and selling the wrenches to Snap-On. In December 1938, Precision was incorporated, the incorporators being said Kenneth R. Larson, Walter Carlsen and George B. "Thomasma" (his true name being George B. Thomasma). Larson became President, Thomasma Vice-President and Carlsen Secretary and Treasurer. All three comprised the Board of Directors. There was issued to Thomasma 260 shares of the capital stock. Precision became engaged in the manufacture of wrenches embodying the structure shown in the Larson application and sold the wrenches to

Snap-On, Precision having taken away this account of Automotive. Thomasma at the time of incorporation of Precision was a trusted employee of Automotive and he had worked with Zimmerman in developing the Zimmerman wrench involved in the Interference. In June, 1939, Automotive had reasons to believe that the "Thomasma", one of the Precision incorporators, was Thomasma, its own employee, and Automotive's President and Vice-President confronted Thomasma with their suspicions, and when he refused to admit his connection with Precision or explain his unauthorized removal of devices from Automotive's plant, he was discharged.

10. Shortly after the Interference was declared R. E. Fidler, of Davis, Lindsey, Smith & Shonts, Automotive's attorneys, expressed to Automotive, skepticism as to Larson's interventorship of the subject matter of the counts of the Interference as Fidler had been apprised of the matters recited in paragraph 9 hereof. When Fidler procured early in August 1940 a copy of Larson's preliminary statement setting forth claimed invention dates, Fidler expressed disbelief to Automotive, and explained Larson's claimed dates raised questions of abandoned experiment and lack of diligence.

11. Immediately after Fidler saw Larson's preliminary statement, Automotive through Fidler, engaged an investigator to investigate Precision's Snap-On's, Larson's 1981 and Thomasma's activities in connection with the wrench in question. The investigation was carried on continuously until January 4, 1941 at the cost of about \$4700.00. The investigator was one who had been used by Fidler's firm for many years and, in accordance with his practice with that firm, no written reports were rendered by the investigator to Fidler. However, Fidler made some memoranda of his own which were preserved and offered in evidence. The investigators were unable to produce sufficient proof to establish that there was anything substantially wrong with the proofs which Larson had taken in the Interference.

12. On November 3, 1940, Thomasma attempted to sell his Precision stock to plaintiff's President and at that time Thomasma asserted that he had brought the invention which was the subject matter of the Interference to Larson. But he declined to reveal specific facts. Plaintiff's President and Fidler refused to consider purchasing the stock.

43. In November 1940, and for some time prior thereto, Larson and Carlsen were unfriendly with Thomasma and they were trying to rid him from the Precision Company.

14. On November 7th and 8th, within a week after Larson's proofs in the Interference closed, Fidler procured an 84-page statement from Thomasma (called in the trial the Thomasma affidavit); subsequently sworn to on November 15, 1940, in which Thomasma purported to relate in considerable detail the facts with respect to Larson's early work. Thomasma in his affidavit stated that in November 1937, Larson came to his home and they discussed the possibility of making a tension wrench and that at that time Thomasma showed Larson a socket, a piece of drill rod, and a 1982 handle. Larson then made some patterns and several wrenches were made before any drawings of the wrench were made. Thomasma in his affidavit claimed authorship in June, 1938, of the drawing (Larson Interference Exhibit 27—Defendants' Exhibit 9) offered by Larson as the work of a High School boy in 1936 and introduced in the Interference as proof of Larson's early work. Thomasma stated that he made this drawing from one of the previously made tools which was before him. It was drawn to dimension and the dimensions were placed on the drawing but it was not dated at the time. The drawing was simply made so that there would be one to show the wrench and the dimensions. Thomasma also explained in his affidavit that Larson and Carlsen were trying to keep him out of the Precision picture.

15. Thomasma having been a disloyal employee of Automotive and also being disgruntled about the treatment he had received from Larson and Carlsen, and Larson's Interference proofs having consisted of the testimony of nine witnesses, as well as documents and physical exhibits, Fidler had the investigator redouble his efforts to further investigate Larson's proofs and also the statements made by Thomasma in his affidavit. Between the time Thomasma made his statement to Fidler and December 20, 1940, when the contracts involved here were executed, the investigation cost nearly \$1700.00.

16. Thomasma submitted to Fidler a drawing which Thomasma had made and Fidler compared it with Defendants' Exhibit 9 drawing (Larson Interference Exhibit 27). On November 22, 1940, Fidler submitted these drawings to a reputable handwriting expert who found some similarities

and discrepancies between the drawings, and declined 1983 to conclude definitely that the two drawings were made by the same person. On November 27, 1940, Fidler submitted another Thomasma drawing to the handwriting expert and the expert found more discrepancies between that drawing and the Larson Interference drawing and was still unable to say that the drawings were made by the same person.

17. George Thomasma, in his affidavit, stated that his brother, John, saw him (George) make the Larson Interference drawing and that John could confirm George's statement that he, George, had made it. Fidler interviewed John Thomasma and the latter stated that he could not verify George's claim that he, George, had made it.

18. Fidler submitted the matter to two lawyers, giving them the essential facts as to the Larson Interference proofs and the Thomasma affidavit, and both of these lawyers advised Fidler that he did not have sufficient proof to accuse anyone of having committed perjury, or sufficient proof to justify taking the matter before the District Attorney.

19. On November 20, 1940, Fidler, as a matter of professional courtesy, had Harry C. Alberts, the attorney for Larson and Snap-On, call on him in his office and at that time Fidler informed Alberts of the contents of the Thomasma affidavit. Alberts asked Fidler to have Thomasma appear before Alberts and Joseph Johnson, President of Snap-On, and Fidler arranged for the meeting which was held in his office on November 28, 1940. Johnson, Alberts, Fidler, the President and Vice-President of Automotive and Thomasma attended the meeting.

Thomasma then told his story which was in substantial 1984 accord with that given in his affidavit. When Thomasma had finished his story Alberts said if he found Thomasma's statement was the truth he would withdraw as attorney for Larson in the Interference and would continue to represent only Snap-On because there might be a conflict of interests between the two.

20. Later in the afternoon of November 28, 1940, Larson and Carlsen were called upon request of Alberts, before Johnson and Alberts, and an explanation demanded in view of Thomasma's story. Alberts advised them that if Thomasma's story were true they would have to procure

other counsel. Larson thereupon admitted his perjury to Johnson and Alberts.

21. Larson, Carlsen and Precision then retained M. K. Hobbs, of the firm of Haight, Goldstein and Hobbs, to undertake to settle the interference on their behalf and for no other purpose. A few days thereafter Hobbs and Edward Haight, of the same firm, had a conference with Fidler at which time Hobbs proposed that Automotive give Precision a license to manufacture and sell the wrench, that Larson concede priority to Zimmerman and that there be a proper release for civil damages. Later Hobbs was advised that Automotive wished a higher royalty. On December 9, Fidler took the entire matter up with his partner, Harry W. Lindsey, Jr. On December 12, 1940, Hobbs, Lindsey and Fidler had a conference at which time the matter of settlement was discussed at some length. On December 13, 1940, at a conference attended by Hobbs, Alberts, Fidler and Lindsey, Fidler and Lindsey submitted a draft form of agreement between the three parties. The draft form was discussed and Alberts requested that separate agreements be prepared, one for Snap-On and the other for Precision and Larson. On December 17, 1940, Alberts wrote 1985 Fidler a letter (Defendants' Exhibit 73) proposing an entirely different basis for settlement which was unacceptable to Automotive and its attorneys. In this letter Alberts said, in effect, that Snap-On would make no further concessions and he also pointed out that Snap-On had legal title to the Larson application and Larson could not settle without Snap-On's consent. The next day Automotive's attorneys served on Alberts a notice and demand (Defendants' Exhibit 77) giving notice of taking depositions on behalf of Zimmerman and demanding production of that portion of the transcript of the testimony which the reporter, who took the Larson Interference depositions, had not transcribed. Alberts immediately on the same day served on Hobbs a substitute power of attorney on behalf of Larson in the Interference. Hobbs refused to accept the power of attorney. A week earlier Hobbs had advised Alberts, Lindsey and Fidler that he, Hobbs, would not act as Larson's attorney in the Patent Office because he, Hobbs had been retained only to represent Larson and Precision in connection with settlement. On December 19, 1940, Lindsey wrote Alberts a letter (Defendants' Exhibit 68) reminding him of his obligations to have the Larson testimony

fully transcribed and advised him that Alberts and Johnson must recognize that a large part of the testimony taken on Larsons' behalf was not the whole truth, that they had been advised of developments so far as they had developed, and that they should recognize that they were holding up the issuance of the Zimmermann patent without justification. On the same day Alberts replied by letter (Defendants' Exhibit 76) charging Lindsey with making threats and stating that the only evidence that Johnson and he had of any wrong doing was given at the November 28, 1940 conference, that Thomasma was not in good repute and that his 1986 uncorroborated word was not deserving of being accepted hook, line and sinker. Alberts also demanded that Automotive's attorneys present evidence of the competent type with sufficient competency to outweigh Larson and his witnesses, before Zimmermann would be entitled to an award of priority in the Interference. On December 20, 1940 Hobbs, Alberts, Lindsey and Fidler had another conference. At this conference Lindsey explained to Alberts that Alberts had read too much into Lindsey's letter of December 19th, and that Lindsey meant to imply no threats. Also at this conference Automotive's attorneys submitted separate agreements to Alberts and Hobbs. The agreements were discussed and modified and the principals virtually agreed to the same in principle.

22. On December 24, 1940 Hobbs, Alberts, Lindsey and Fidler had a short conference at which time the executed contracts, involved here, were exchanged.

23. Concerning the contracts between the various parties to this consolidated cause:

A. By virtue of the Automotive-Precision and Larson contract (Defendants' Exhibit 4), Larson conceded priority to Zimmerman as to common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was also assigned to Automotive and Precision paid \$500.00 to Automotive (which money went to Thomasma for the return of his Precision stock to Precision), and in consideration thereof Automotive gave Precision the right to complete unfilled orders on hand from Snap-On to the extent of approximately 6,000 wrenches; released Precision and Larson and their customers from liability for 1987 infringement by reason of the manufacture and use of previously sold wrenches, and gave Precision and Larson a general release as to all civil damages. Precision

and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications.

B. By virtue of the Automotive-Snap-On contract (Defendants' Exhibit ...), Snap-On agreed to reassign the Larson application to Precision and acknowledged validity of the claim of the patents to issue on the Zimmerman and Larson applications, and Automotive gave to Snap-On the right to sell said approximately 6,000 wrenches then on order, released Snap-On and its customers from all liability for infringement by reason of the sale of previously sold wrenches, and gave to Snap-On a general release as to all civil damages.

C. The general releases as to all civil damages were considered important by all of the attorneys for all the parties. Hobbs and Alberts were fearful that Automotive might sue Precision, Larson and Snap-On because Thomasma, while a trusted employee of Automotive, suggested to Larson that a wrench be designed and helped Larson and Carlson organize Precision, with the result that Snap-On's business with Automotive was taken over by Precision.

D. By virtue of an agreement (Plaintiff's Exhibit 3) between Snap-On, on the one hand, and Larson and Precision on the other, which agreement is dated December 20, 1940, Snap-On reassigned to Larson and Precision whatever title Snap-On had to the Larson application. Precision agreed to manufacture and deliver to Snap-On said approximately 6,000 wrenches then on order. Snap-On 1988 advanced to Precision \$500.00, which was paid to Automotive. Snap-On assented to the Automotive-Precision and Larson agreement, Exhibit 4, and Snap-On agreed to the cancellation of an agreement between it and Precision dated September 28, 1938 (Defendants' Exhibit 61), by virtue of which Snap-On had obtained some title to the Larson application. There is no evidence that Automotive and its attorneys knew of said December 20, 1940, Snap-On-Precision agreement until about April 14, 1943.

24. At the meeting on December 24, 1940, it was agreed that the notebooks in which the reporter had taken down the Larson Interference testimony stenographically, and the original copies of the Interference depositions should be turned over to Mr. Alberts for preservation, Hobbs having his reasons for having them preserved and Lindsey and Fidler having their reasons. Pursuant to that agreement, on December 26, 1940, Fidler wrote the reporter advising

the reporter that it "was agreed" that the reporter would deliver to Alberts his notebooks and the original copies of the depositions.

25. After the Larson application was assigned to Automotive the Interference counts were cancelled from the Larson application and the Larson patent issued only with claims which are directed to specific structure disclosed in the Larson application, and which are not readable on the disclosures of the Zimmerman applications and the Zimmerman patents which issued thereon.

1989 26. Defendants pleaded that Larson had committed perjury in the Interference. That perjury was proven and was conceded by Automotive at the trial. Larson's evidence in that Interference sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor Zimmerman. It was proven at the trial that the Larson Interference drawing (Defendants' Exhibit 9) of the Precision wrench was made by Thomasma in the middle of 1938 and not in 1936 by a high school boy as Larson had testified to in the Interference. The drawing was made (and undated) for production purposes and not to support any dates of invention. It was after the Interference was declared in 1939 that Larson signed and placed a 1936 date on the drawing and had several others, including two of his later Interference witnesses, likewise sign the drawing.

27. The oral testimony in this consolidated case shows that if Larson's proofs in the Interference had been true and had there been no questions as to abandoned experiment or lack of diligence in filing his application, he would have been entitled to an award of priority in the Interference.

28. The Thomasma affidavit was enough evidence of perjury for any lawyer who was so inclined to bring it to the prosecuting officers of this district. Even if it were not, as soon as Larson had affixed his signature to the agreement of December 20, 1940, he admitted thereby that he had committed perjury. In no other way, until Larson's perjury was pleaded in the Snap-On action, was Automotive or its agents or attorneys informed or advised by Larson, Carlsen, Alberts, Johnson, or anyone else that Larson had committed or admitted perjury.

29. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officers of this district of perjury in the proceedings, until the perjury was pleaded in the Snap-On action.

30. Defendants contended that because of Larson's perjury the contracts should be declared null and void and the Larson patent should be declared inoperative, null and void. That patent is based on perjury. It has been connected with that patent ever since the application was filed. That patent is a fraud and a fraud was perpetrated on the Commissioner of Patents.

31. Plaintiff's conduct in not taking steps to inform the proper officials of perjury in the Interference proceedings, and in bringing suit on the patents issuing on the applications involved in that Interference and on the contracts procured in settlement thereof, has so infected this cause of action with unclear hands, that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

32. Petitioner (Snap-On) in Civil Action 4451 claiming under and by virtue of Larson must be denied relief on the same ground.

33. Automotive and its agents and attorneys were not aware that Larson had committed perjury until December 20, 1940, when Larson executed the Exhibit 4, agreement.

34. Automotive and its attorneys did not at any time charge Larson or any of his witnesses with the crime of perjury.

35. Automotive and its agents did not threaten Larson or any of his witnesses, Precision, Snap-On or Alberts with the institution of prosecution for perjury.

36. Automotive and its attorneys did not promise Larson, Precision, Snap-On, Johnson or Alberts, or anyone else, that they would withhold any complaint or perjury from the proper authorities.

37. Automotive and its attorneys did not agree to suppress any of the evidence in consideration of defendants entering into the contracts.

38. Automotive and its agents did not threaten Larson, any of his witnesses, Precision, Snap-On or Alberts that the proper authorities would be informed with respect to the perjury unless the Larson application and the sum of \$500.00 were transferred to Automotive.

39. Automotive, as a result of the settlement contracts, did not receive the Larson application, the \$500.00 and the other promises set forth in the contracts, under threat of not informing or in consideration for not informing or not prosecuting or suppressing evidence with respect to the perjury.

40. Aside from Automotive's and its attorneys' failure to inform the proper authorities of this District of the situation involving Larson's perjury, Automotive and its attorneys did not in any way suppress the evidence of perjury nor did they take any positive steps or do any affirmative act to conceal a crime of perjury. Automotive 1992 and its attorneys carefully preserved and voluntarily produced for the inspection of defendants' attorneys in connection with the trial, all of the evidence which had been accumulated in connection with the Interference, including copies of the Interference depositions in so far as they were transcribed, all correspondence, memoranda, investigators' invoices, etc., Mr. Hobbs and Mr. Alberts preserved all of their files. The only thing missing are two of the notebooks of the reporter who reported the Larson Interference testimony and Automotive and its attorneys are in no way responsible for the disappearance of those books.

41. Neither Automotive nor its attorneys in any way coerced Snap-On, Larson or Precision into entering into the contracts by threats of prosecution, or otherwise.

42. Neither Automotive nor its attorneys threatened Snap-On and its attorney with the crime of possessing or concealing knowledge of perjury and with action for civil and criminal conspiracy.

Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Amended and Supplemental Complaints in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this court with unclean hands in Civil Action No. 4451.

1993 V. The Petition and Amended Petitions in Civil Action No. 4451 are ordered dismissed.

VI. The first Counterclaim by respondent (plaintiff here) in Civil Action No. 4382 is ordered dismissed.

VII. There will be no award of costs.

VIII. Neither Automotive nor its officers, agents or attorneys are guilty of any crime or compounding any crime.

Remarks.

Findings 28, 30, 31 and 33 and the first clause of Finding 40, and Conclusions II, III, VI and VII are only proposed by Automotive's attorneys in order to accord with the court's oral opinion, and are excepted to.

With respect to proposed Finding 30 (which mostly follows the language of the court in its oral opinion) Automotive's counsel respectfully point out the following: Neither in the pleadings nor at the trial did defendants urge that because of Larson's perjury the Larson patent in suit was inoperative, null and void. The record shows that perjury was not connected with the Larson application when filed, and that the patent as issued was not based on perjury. We submit that an accurate and appropriate finding in this regard would be as follows:

"When Larson filed his application his claims were specifically limited to the so-called 'tailpiece' which was an improvement invented, (if any invention existed) by Larson. No perjury in connection with the application arose until August 1939 when Larson filed in the Patent Office an affidavit under Rule 93 as to his date of conception. The Interference was then declared and Larson filed a false preliminary statement and testified falsely in the Interference. Larson's perjured preliminary statement and perjured testimony pertained only to the broad counts of the Interference which counts came from the Zimmerman applications and were suggested by the Patent Office to Larson."

1994 The claims of the Larson patent are restricted to detailed structure invented by Larson and not disclosed in the Zimmerman applications nor asserted to have been invented by Zimmerman."

Respectfully submitted,

Davis, Lindsey, Smith & Shonts,

Harry W. Lindsey, Jr.,

Raymond E. Fidler,

Albert J. Smith, H. W. L., Jr.,

Attorneys for Automotive.

1995. And afterwards on, to wit, the 28th day of June, 1943, came the Defendants by their attorneys and submitted their certain Proposed Findings Of Fact And Conclusions Of Law in words and figures following, to wit:

1996 IN THE UNITED STATES DISTRICT COURT.

(Caption—4382 & 4451)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidation of Civil Actions No. 4382 and No. 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the Court having heard testimony herein for nine days, and having heard argument of counsel, and having delivered an oral opinion herein on May 21, 1943, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792; Zimmerman No. 2,283,888, and Zimmerman Reissue No. 2,219 (formerly No. 2,269,503), all for Torque Wrenches, and to enforce a certain contract entered into between the parties hereto on December 20, 1940, in settlement of Patent Office Interference (No. 77,565) involving the three applications for the respective patents sued upon.

2. Among other defenses, defendants pleaded that during the Interference proceedings, the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 7,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7, 8), which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence to procure the execution of the contracts in suit, payment to plaintiff of the sum of \$500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and plaintiff did

suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering the contracts in suit null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of *Snap-On Tools Corporation v. Automotive Maintenance Machinery Co.*, Civil Action No. 4451, for declaratory judgment upon the same patents and a corresponding contract dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph 1 hereof, and also charging infringement of Patent No. 1,936,612. The defense of unclean hands was ordered tried separately from the patent issues made by the pleadings, in both Civil Action No. 4382 and Civil Action No. 4451, and these Findings of Fact and Conclusions of Law are entered upon the conclusion of that separate trial and are applicable to both of said causes.

4. Testimony has been heard in open court for nine days. All of the attorneys who concluded the agreements of December 20, 1940 in suit, the presidents of the three corporations involved, and many other witnesses have been heard. The testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony, and the many documents in evidence.

5. That there was perjury in the Interference upon a material issue is pleaded, proven and conceded. Larson's evidence in that proceeding sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor Zimmerman.

6. Exposure of Larson's claimed dates in his Preliminary Statement led to expressions of disbelief by plaintiff's Attorney, an extensive investigation by private detectives, and the disclosure that one of the organizers, 1999 stockholders and officers of Precision Instrument Manufacturing Company (one George B. Thomasma)

was a former employee of plaintiff and close associate of Zimmerman. Before Larson's testimony in the Interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the Interference to Larson.

7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the facts with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave no doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a highschool boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

8. Within a week after the execution of the Thomasma affidavit, plaintiff's attorney informed Larson's patent attorney of the information disclosed in the Thomasma affidavit and a week later Thomasma was examined orally in the office of plaintiff's attorney before the president and attorney of Snap-On Tools Corporation (Petitioner in Civil Action No. 4451, and sole outlet for Precision Instrument Manufacturing Company). Thereupon Larson 2000 was called before Snap-On's president and patent attorney (who had conducted the Interference proceedings on behalf of Larson) and explanation demanded. Larson admitted his perjury and was told to procure other counsel. Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury.

9. Larson procured other counsel who immediately undertook efforts at settlement on his behalf. A number of meetings were held between the attorney for Snap-On, the attorney for Larson and Precision Instrument Manufacturing Company, and attorneys for plaintiff, a draft agreement was considered, the negotiations broken off, Larson's new counsel withdrew, but subsequently participated in the negotiations which were resumed and concluded on December 20, 1940, when the two agreements of December 20, 1940, sued upon, were executed, plaintiff was

paid \$500.00, Zimmerman's priority conceded by Larson, and the Larson application assigned to plaintiff.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman, and that there was no occasion for Larson's concession of priority to Zimmerman and the agreements of December 20, 1940, unless Larson admitted the falsity of his proofs.

2001 11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson's Interference proofs were perjured.

12. On December 26, 1940, plaintiff's attorney wrote the reporter who had reported the Larson Interference testimony, to deliver the remainder of the transcribed record and the notebooks (containing also some untranscribed notes) to Larson's attorney, who had engaged the reporter.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

14. Plaintiff procured the Larson patent in suit by continuing the prosecution of the Larson application assigned to plaintiff in settlement of the Interference on December 20, 1940.

15. Plaintiff procured the contracts which it seeks to enforce in these cases (the two cases now consolidated) in settlement of the Interference on December 20, 1940.

16. Plaintiff's conduct in remaining silent as to Larson's perjury after discovery thereof, and in seeking to exploit the contracts and patent applications procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands
2002 that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

17. Petitioner (Snap-On) in Civil Action No. 4451, claiming under and by virtue of Larson, must be denied relief on the same grounds.

Conclusions of Law.

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this Court with unclean hands in Civil Action No. 4451.

V. The Petition and Amended Petitions (in Civil Cause No. 4451 are ordered dismissed.

VI. The Counterclaim by respondent (plaintiff here) in Civil Action No. 4451 is ordered dismissed.

VII. There will be no award of costs.

United States District Judge.

June 1943.

2003 And afterwards, to wit, on the 12th day of July, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

2004 IN THE UNITED STATES DISTRICT COURT.
(Caption 4382 and 4451)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause, Consolidated of Civil Actions No. 4382 and 4451, having come on to be heard for the entry of Findings of Fact and Conclusions of Law, and the Court having heard testimony herein for nine days, and having heard argument of counsel, the Court hereby enters the following Findings of Fact and Conclusions of Law:

Findings of Fact.

The Court finds as facts that:

1. Civil Action No. 4382 was brought as a suit in equity by plaintiff for infringement of three United States Letters Patent, respectively, Larson No. 2,279,792, Zimmerman No.

2,269,503 and Zimmerman Reissue No. 22,219 (formerly No. 2,283,888), all for Torque Wrenches, and to enforce a certain contract entered into between the parties hereto on December 20, 1940, in settlement of Patent Office Interference (No. 77,565) involving the three applications for the respective patents sued upon.

2605 2. Among other defenses, defendants pleaded that during the Interference proceedings the party Larson testified falsely with respect to the dates of making a certain drawing (Larson, Interference Exhibit 27,—Defendants' Exhibit 9), and certain models (Defendants' Exhibits 7, 8) which were material and critical evidence upon the issues of the Interference, that plaintiff and its agents were aware that the testimony was false, and that plaintiff employed this knowledge, with threats of prosecution for perjury, and promises of suppression of the evidence, to procure the execution of the contracts in suit, payment to plaintiff of the sum of \$500.00, and the transfer to plaintiff of the application for the Larson patent in suit, and plaintiff did thereafter suppress the evidence of the perjury and withhold making complaint to the proper officers, thereby compounding a crime, rendering the contracts in suit null and void, and infecting plaintiff's cause of action with unclean hands requiring its dismissal.

3. Civil Action No. 4382 was consolidated for trial with the suit of Snap-On Tools Corporation *vs.* Automotive Maintenance Machinery Co., Civil Action No. 4451, for declaratory judgment upon the same patents and a corresponding contract dated December 20, 1940, between those corporations, also executed in settlement of the Interference, in which the same defense was pleaded. Automotive, respondent in Civil Action No. 4451, filed a counterclaim against Snap-On (considered a defendant in the consolidated cause) charging infringement of said three patents mentioned in Paragraph I hereof, and also charging infringement of Patent No. 1,936,912. The defense of unclean hands was ordered tried separately from the 2006 patent issues made by the pleadings, in both Civil Action No. 4382 and Civil Action No. 4451, and these Findings of Fact and Conclusions of Law are entered upon the conclusion of that separate trial and are applicable to both of said causes.

4. Testimony has been heard in open court for nine days. All of the attorneys who concluded the agreements

of December 20, 1940 in suit, the presidents of the three corporations involved, and many other witnesses have been heard. The testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony, and the many documents in evidence.

5. That there was perjury in the Interference upon a material issue is pleaded, proven and conceded. Larson's evidence in that proceeding sought to establish a date of conception and reduction to practice in 1934, three years before he had done any work on the subject matter of the Interference, and almost three years before the earliest date claimed by Automotive through its inventor, Zimmerman.

6. Exposure of Larson's claimed dates in his Preliminary Statement led to expressions of disbelief by plaintiff's Attorney, an extensive investigation by private detectives, and the disclosure that one of the organizers, stockholders and officers of Precision Instrument Manufacturing Company (one George B. Thomasma) was a former employee of plaintiff and close associate of Zimmerman. Before Larson's testimony in the interference was concluded, Thomasma sought out plaintiff's president and revealed that he had brought the invention which was the subject matter of the interference to Larson.

2007 7. Within a week after Larson's proofs in the Interference closed, plaintiff's attorney had procured an eighty-four page statement from Thomasma (called in the trial the Thomasma affidavit), subsequently sworn to on November 15, 1940, which related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt of the author's knowledge of the facts. In that statement, Thomasma claimed authorship in 1938 of the drawing offered by Larson as the work of a high-school boy in 1936 and introduced as proof of Larson's early work, and at the same time, Thomasma produced other drawings later submitted to a handwriting expert by plaintiff, as proof of his claim.

8. Within a week after the execution of the Thomasma affidavit, plaintiff's attorney informed Larson's patent attorney of the information disclosed in the Thomasma affidavit and a week later Thomasma was examined orally in the office of plaintiff's attorneys before the president and attorney of Snap-On Tools Corporation (Petitioner in

Civil Action No. 4451, and sole outlet for Precision Instrument Manufacturing Company). Thereupon Larson was called before Snap-On's president and patent attorney (who had conducted the Interference proceedings on behalf of Larson) and explanation demanded. Larson admitted his perjury and was told to procure other counsel. Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury.

9. Larson procured other counsel who immediately undertook efforts at settlement on his behalf. A 2008 number of meetings were held between the attorney for Snap-On; the attorney for Larson and Precision Instrument Manufacturing Company, and attorneys for plaintiff, a draft agreement was considered; the negotiations were once broken off, but were subsequently resumed and concluded on December 20, 1940 when the two agreements of that date, sued upon, were executed. By the terms of the Automotive-Precision-Larson contract (Defendants' Exhibit 4) Larson conceded priority to Zimmerman as to the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was assigned to Automotive. Precision paid \$500 to Automotive. Automotive licensed Precision and Larson to complete unfilled orders from Snap-On to the extent of approximately 6000 wrenches, any wrenches in excess of that number to bear a royalty of 10%. Automotive released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches and gave Precision and Larson a complete and general release as to all civil damages. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. The manufacture of wrenches for the unfilled orders was not completed until October 1941.

10. The oral testimony in this consolidated cause is in irreconcilable conflict. It does disclose that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman.

11. The proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his Interference proofs were insufficient.

2009 12. On December 26, 1940, plaintiff's attorney wrote the reporter who had reported the Larson Interference testimony, to deliver the remainder of the transcribed record and the notebooks (containing also some untranscribed notes) to Larson's attorney, who had engaged the reporter.

13. Not one of the parties or attorneys involved in the Larson-Zimmerman Interference settlement had taken any steps to inform the proper officials of the perjury in that proceedings until the defense of unclean hands was pleaded in the two cases now consolidated.

14. Plaintiff procured the Larson patent in suit (but not with the interference claims therein) by continuing the prosecution of the Larson application assigned to plaintiff in settlement of the Interference on December 20, 1940.

15. Plaintiff procured the contracts which it now seeks to enforce in these cases (the two cases now consolidated) in settlement of the Interference on December 20, 1940.

16. Plaintiff's conduct in remaining silent after securing the Thomasma affidavit and in seeking to exploit the contracts and patent application procured in the settlement of the Larson-Zimmerman Interference, has so infected its causes of action with unclean hands that a court of equity cannot entertain the suit or any prayer for relief on plaintiff's behalf.

17. Petitioner (Snap-On) in Civil Action No. 4451, claiming under and by virtue of Larson, must be denied relief on the same grounds.

2010 *Conclusions of Law.*

I. This court has jurisdiction of the parties hereto and of the subject matter of Civil Actions Nos. 4382 and 4451.

II. Plaintiff comes into this court with unclean hands in Civil Action No. 4382.

III. The Amended and Supplemental Complaints in Civil Action No. 4382 are ordered dismissed.

IV. Petitioner comes into this Court with unclean hands in Civil Action No. 4451.

V. The Petition and Amended Petitions in Civil Action No. 4451 are ordered dismissed.

VI. The Counterclaims by respondent (plaintiff here) in Civil Action No. 4451 are ordered dismissed.

VII. There will be no award of costs.

Igoe,

United States District Judge.

July 12th, 1943.

2011 And on, to wit, the 12th day of July, 1943, there was filed in the Clerk's office of said Court a certain Memorandum of the Hon. Michael J. Igoe, District Judge, in words and figures following, to wit:

2012 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382 and 4451)

MEMORANDUM.

In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

It was not the intention of the court that the statements in the opinion should be construed as implying that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act.

Igoe,

United States District Judge.

2013 And afterwards, to wit, on the 12th day of July, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

2014 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—4382 & 4451) * *

JUDGMENT.

This consolidated cause having come on to be heard for entry of judgment upon the Findings of Fact and Conclusions of Law heretofore entered herein—

It Is Ordered,—That

1. The Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 are dismissed for want of equity.

2. The Petition and Amendment Petitions in Civil Action No. 4451 are dismissed for want of equity.

3. The Counterclaims in Civil Action No. 4451 are dismissed for want of equity.

4. There shall be no award of costs.

Igoe,

United States District Judge.

July 12th, 1943.

2015 And afterwards, on, to wit, the 22nd day of July, 1943 came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal to the Circuit Court of Appeals, in words and figures following, to wit:

2016 IN THE UNITED STATES DISTRICT COURT
 For the Northern District of Illinois
 Eastern Division.

Automotive Maintenance Machinery
 Co.,

Plaintiff.

vs.

Precision Instrument Manufactur-
 ing Company, Kenneth R. Lar-
 son and Snap-On Tools Corpo-
 ration,

Defendants.

Civil Action

No. 4382,

(Consolidated with
 Civil Action No. 4451)

NOTICE OF APPEAL TO THE CIRCUIT COURT OF
 APPEALS.

Notice is hereby given that Automotive Maintenance Machinery Company, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Judicial Circuit from the Judgment entered on July 12, 1943, in this consolidated action, and particularly with respect to paragraphs 1 and 3, dismissing for want of equity the Complaint and Amended and Supplemental Complaint in Civil Action No. 4382 and the "Counterclaims" in Civil Action No. 4451 and with respect to paragraph 4 in failing to award costs to plaintiff, no appeal being taken by plaintiff from paragraph 2 of the Judgment dismissing for want of equity the Petition and Amended Petitions in Civil Action No. 4451.

Davis, Lindsey, Smith and Shounts,

Attorneys for Plaintiff.

Harry W. Lindsey, Jr.,

Raymond E. Fidler,

Of Counsel.

2017 And afterwards, on, to wit, the 6th day of August, 1943, came the Plaintiff Appellant by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit:

2018 IN THE UNITED STATES DISTRICT COURT.
(Caption—4382 & 4451)

PLAINTIFF'S STATEMENT OF POINTS.

1. Error in dismissing the Complaint and Amended and Supplemental Complaint in Civil Action No. 4382, and the "Counterclaims" in Civil Action No. 4451.

2. Error in decreeing that there shall be no award of costs in favor of plaintiff.

3. Error in not entering a judgment decreeing that plaintiff has not been guilty of unclean hands with respects to each of the patents and contracts in suit, that the Automotive-Precision-Larson agreement (Defendants' Exh. 4) and the Automotive-Snap-On agreement (Defendants' Exh. 5) are good and valid in law and equity and enforceable against the respective defendants, that plaintiff recover its costs from the defendants and that the allegations in defendants' pleadings attacking validity of each of the patents in suit be stricken.

4. Error in entering each of the Court's "Findings of Fact", except Findings Nos. 5, 9, 14 and 17 and in entering each of the Court's "Conclusions of Law" except Conclusions Nos. I and IV.

2019 5. Error in not entering "Plaintiff's Proposed Findings of Fact and Conclusions of Law", except proposed Findings 28, 30, 31 and 33, the first clause of proposed Finding 40 and proposed Conclusions II, III, VI and VII.

6. Error in finding (Finding No. 1) that plaintiff in Civil Action No. 4382 brought suit "to enforce a certain contract" and in not finding that plaintiff charged the patent infringement complained of to be in violation of said contract.

7. Error in finding (Finding No. 3) that in Civil Action No. 4451 suit was brought by plaintiff upon "a corresponding contract".

8. Error in finding (Finding No. 3) that the "defense of unclean hands as ordered tried separately from the patent issues" and in not finding that on April 20, 1943 the Court entered an order that the patent issues raised

by the pleadings in this consolidated cause "be set for trial on a separate date from the issues involving the validity of the contracts, Exhibits 4 [5] and 6 [4] now set for May 10, 1943".

9. Error in finding (Findings Nos. 4 and 10) that the testimony is in many respects in direct conflict, both with testimony of other witnesses, pre-trial testimony and the many documents in evidence, and that the oral testimony in this consolidated cause is in irreconcilable conflict.

10. Error in finding (Finding No. 6) that the disclosure of Larson's claimed dates in his Preliminary Statement led to the disclosure that George B. Thomasma was a former employee of plaintiff, and in not finding that in June, 1939, prior to the declaration of interference, plaintiff had reasons to believe that said Thomasma was one of the Precision incorporators and officers and thereupon discharged Thomasma.

11. Error in finding (Finding No. 7) that before Larson's testimony in the interference was concluded, Thomasma "revealed" that he had brought the subject matter of the Interference to Larson.

12. Error in finding (Finding No. 7) that the Thomasma affidavit "related in extensive detail the statements of Thomasma with respect to Larson's early work and disclosed such intimate knowledge thereof as to leave little doubt as to the author's knowledge of the facts", and that Thomasma produced other "drawings" as proof of his claim that he was the author of the drawing offered by Larson as the work of a high-school boy.

13. Error in not finding that Thomasma had been a disloyal employee of Automotive and was disgruntled about the treatment he had received from Larson and Carlson; that Larson's Interference proofs consisted of the testimony of nine witnesses, as well as documents and physical exhibits; that after Thomasma made his affidavit plaintiff's attorneys had the investigator redouble his efforts to further investigate Larson's proofs and also the statements made by Thomasma in his affidavit, the further expense of investigation being over \$2000.00; that Thomasma submitted to plaintiff's attorney, but one drawing for comparison with the Larson Interference drawing; that Automotive's attorneys submitted these drawings

and another drawing of Thomasma to a reputable 2021 handwriting expert who declined to conclude definitely that the three drawings were made by the same person; that Thomasma, in his affidavit, stated that his brother, John, saw him make the Larson Interference drawing and the brother could not verify Thomasma's claim that he had made it; and that plaintiff's attorney submitted the essential facts as to the Larson proofs in the Interference to two reputable lawyers both of whom advised there was not sufficient proof to accuse anyone of having committed perjury, or sufficient proof to justify taking the matter before the District Attorney.

14. Error in finding (Finding No. 8) that "Up to the time that Larson was confronted with and admitted perjury to his patent attorney, no one else up to that time was involved with that perjury", and in not finding that Carlsen, and probably others, had also committed perjury in the Interference.

15. The Court erred (Finding No. 10) in finding that the oral testimony in this consolidated case discloses that if Larson's proofs in the Interference had been true, he would have proved priority of invention two or three years earlier than Zimmerman, without finding further that the record also raised questions of abandoned experiment and lack of diligence on the part of Larson.

16. Error in finding (Finding No. 11) that the "proofs establish that the attorneys who concluded the settlement knew before and certainly on December 20, 1940, that Larson knew his interference proofs were insufficient"—if the Court had reference to perjury—and in not 2022 findings that plaintiff and its attorneys were not aware that any of the Interference witnesses had committed perjury until Larson admitted his perjury in open court in this consolidated cause.

17. With respect to Finding No. 12, the Court erred in not further finding that the attorneys for plaintiff, Larson, Precision and Snap-On had agreed that the transcribed notes and notebooks of the reporter, who reported the Larson Interference testimony, should be turned over to Larson's attorney for the purpose of preservation, and in not finding that certain portions of the notebooks (containing untranscribed notes) had been destroyed by Lar-

son's attorney and that plaintiff's attorney had nothing to do with such destruction.

18. The Court erred in entering Finding No. 13 in so far as that Finding infers that plaintiff and its attorneys were aware of the perjury in the Interference before the defense of unclean hands was pleaded in the two cases now consolidated.

19. The Court erred in entering Finding No. 15 in so far as it finds that plaintiff in Civil Action No. 4382 seeks to enforce either of the contracts, as plaintiff asked for no affirmative relief with respect to either of said contracts in said action.

20. Error in finding (Finding No. 16) that plaintiff's conduct in remaining silent after securing Thomasma's affidavit and seeking to exploit the contracts and patent application procured in settlement of the Interference,

has so infected its cause of action with unclean hands

that a Court of equity cannot entertain the suit or any prayer for relief in plaintiff's behalf, and in not finding that plaintiff did not remain silent after securing the Thomasma affidavit, that that affidavit was insufficient, in view of the situation then existing, to present it to a District Attorney, that plaintiff was fully justified and warranted in equity and in law in prosecuting the Larson application to a patent and in bringing action against the defendants under the Larson patent and the contracts and that plaintiff is not guilty of unclean hands.

21. Error in not finding that plaintiff and its attorneys were not aware that Larson nor any of his witnesses had committed perjury in the Interference until Larson admitted his perjury in open court, that they did not at any time charge Larson or any of his witnesses with the crime of perjury, that they did not threaten Larson or any of his witnesses, Precision, Snap-On or Alberts with the institution of prosecution for perjury, that they did not promise any of the same that they would withhold any complaint of perjury from the proper authorities, that they did not agree to suppress any of the evidence in consideration of defendants entering into the contracts in issue, that they did not threaten Larson, Precision, Snap-On or Alberts that the proper authorities would be informed with respect to the perjury unless the Larson application and sum of \$500.00 were transferred to plaintiff.

that plaintiff as a result of his settlement contracts did not receive the Larson application, the \$500.00 and other promises set forth in the contracts, under threat of not informing or in consideration for not informing or not prosecuting or suppressing evidence with respect to the perjury, that plaintiff and its attorneys did not in any way suppress the evidence of perjury nor take any positive steps or take any affirmative action to conceal the crime of perjury, that they did not in any way coerce any of the defendants into entering into the contracts by threats of prosecution or otherwise, and that they did not threaten Snap-On or its attorney with the crime of concealing knowledge of perjury and with action for civil or criminal conspiracy.

22. Error in not finding that when Larson filed his application his claims were specifically limited to the so-called "tailpiece", which was an improvement invented (if any invention existed) by Larson, that no perjury in connection with the application arose until August 1939 when Larson filed in the Patent Office an affidavit under Rule 93 as to his date of conception, that the Interference was then declared and Larson filed a false preliminary statement and testified falsely in the Interference, and that Larson's perjured preliminary statement and perjured testimony pertained only to the broad counts of the Interference, which counts came from the Zimmerman applications and were suggested by the Patent Office to Larson, that after the application was assigned to Automotive its attorneys cancelled the broad claims constituting the counts of the Interference and that the Larson patent, which issued on said application, only contains limited claims directed to specific structure invented by Larson and not readable on the disclosures of the Zimmerman applications involved in the Interference.

23. Error in concluding as a matter of law that plaintiff was in court with unclean hands.

2025 24. Error in concluding as a matter of law that the charges of infringement as to each respective patent in suit should be dismissed on the ground of unclean hands, and in not concluding as a matter of law, that the unclean hands found by the Court did not warrant the dismissal of the charges of patent infringement set up in the Amended and Supplemental Complaints in Civil Action

No. 4382 and in Plaintiff's First Counterclaim in Action No. 4451.

25. Error in not concluding as a matter of law that plaintiff was in court with clean hands, that plaintiff and its attorneys were not guilty of any crime or of compounding any crime, as alleged in defendants' pleadings, and that the contracts were good, valid and enforceable.

Automotive Maintenance Machinery Co.,

By Frank Parker Davis,

Harry W. Lindsey, Jr.,

Raymond E. Fidler,

Its Attorneys.

2026 And afterwards, on, to wit, the 22nd day of July, 1943, came the Plaintiff Appellant by its attorneys and filed in the Clerk's office of said Court its certain BOND ON APPEAL, in words and figures following, to wit:

2027 Know all Men by these Presents:

That we, Automotive Maintenance Machinery Co., as principal, and The Fidelity and Casualty Company of New York, as surety, are held and firmly bound unto Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation in the full and just sum of Two Hundred Fifty and No 100 (\$250.00) to be paid to the said Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty first day of July in the year of our Lord one thousand nine hundred and forty three.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court between Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corporation a judgment was rendered against Automotive Maintenance Machinery Co. and the said Automotive Maintenance Machinery Co. having filed in the Clerk's Office of the said District Court Notice of Appeal to the

United States Circuit Court of Appeals for the Seventh Circuit, to reverse the judgment of the aforesaid suit, in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within forty (40) days from the date hereof.

Now, the condition of the above obligation is such, that if the said Automotive Maintenance Machinery Co. shall pay the costs if the appeal is dismissed or the judgment affirmed, or pay such costs as the appellate court may award if the judgment is modified then the above obligation to be void; otherwise to remain in full force and virtue.

Automotive Maintenance Machinery Co.,

By: Davis, Lindsey, Smith &

Shonts

(Seal)

The Fidelity and Casualty Com-
pany of New York

(Seal)

By: Arthur F. Evans,

Arthur F. Evans,

(Corp. Seal)

Attorney.

Sealed and delivered in presence of:

Approved by:

(Jurat Attached Not Copied.)

Endorsed: United States District Court. (Cap-
tion—4382) * * Bond on Appeal: Filed 5.00 Jul 22 1943
At 12:20 o'clock pm. Roy H. Johnson Clerk AEC.

2029 And afterwards, to wit, on the 9th day of August, 1943, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

ORDER.

Upon consent of Counsel for the respective parties,
It Is Hereby Ordered that the Clerk of this Court transmit to the Clerk of the Circuit Court of Appeals all of the original documentary and physical Court exhibits listed in Items 34, 35, 36 and 37 of Plaintiff-Appellant's Designation of Contents of Record on Appeal in lieu of copies thereof.

Igoe,

United States District Judge.

August 9, 1943.

Entry of the above Order is hereby consented to:

Davis, Lindsey, Smith & Shonts,
Attorneys for Plaintiff, Automotive Maintenance Machinery Co.

Casper W. Ooms,
Attorney for Defendants, Precision Instrument Manufacturing Company and Kenneth R. Larson.

Will Freeman,
Attorney for Defendant, Snap-On Tools Corporation.

2031 And on, to wit, the 6th day of August, 1943, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Designation of Contents of Record on Appeal in words and figures following, to wit:

2032 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—4382, 4451) • •

**PLAINTIFF-APPELLANT'S DESIGNATION OF
CONTENTS OF RECORD ON APPEAL.**

To the Clerk of the Above District Court:

You are hereby requested, pursuant to the provisions of Rule 75(a) and the other sections of the Federal Rules of Civil Procedure governing appeals, to prepare a transcript of record on appeal and incorporate therein the following items:

1. Amended and Supplemental Complaint filed November 30, 1940, in Civil Action No. 4382 (original Complaint filed June 15, 1942).

2. Amended Answer of Defendants to Amended and Supplemental Complaint filed February 8, 1943, in Civil Action No. 4382.

3. Third Amended Petition for Declaratory Decree, filed March 1, 1943, in Civil Action No. 4451 (original Petition filed July 6, 1942).

2033 Respondent's Answer to Third Amended Petition For Declaratory Decree, filed March 10, 1943, in Civil Action No. 4451.

5. Respondent's Amended and Supplemental First Counterclaim, filed November 23, 1942, in Civil Action No. 4451.

6. Answer of Petitioner to Respondent's First and Second Counterclaims filed December 14, 1942, in Civil Action No. 4451 (omitting all of the answer to the Second Counterclaim except paragraph 32 thereof).

7. Amended Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim, filed March 1, 1943, in Civil Action No. 4451.

8. Stipulation of August 5, 1943, as to substitution in printed record of summaries of certain pleadings of the respective parties in their earlier forms.

9. Automotive's Motion for an order transferring Civil Action No. 4451 to Executive Committee of the District Court for reassignment to Judge Igoe.

10. Order transferring Civil Action No. 4451 to Executive Committee for reassignment to Judge Igoe, entered March 1, 1943.

11. Order of Judges Barnes, Holly and Sullivan, entered March 3, 1943, reassigning Civil Action No. 4451 to Judge Igoe.

12. Motion to Consolidate Civil Actions Nos. 4382 and 4451.

2034 13. Motion for an Order Directing Kenneth R. Larson to Appear and Testify.

14. Petition on Behalf of Automotive's Attorneys in Support of Plaintiff-Respondent's "Motion For An Order Directing Kenneth R. Larson To Appear and Testify".

15. Motion for Separate Trial.

16. Order of March 27, 1943, consolidating Civil Actions Nos. 4382 and 4451.

17. Order of March 27, 1943, allowing motion for separate trial on certain issues.

18. Order of April 20, 1943, granting leave to Harry C. Alberts to withdraw as counsel and setting the patent issues for trial on a separate date from the issues involving validity of the contracts, Exhibits 4 and 6, set for trial May 10, 1943.

19. Withdrawal of Appearance of Harry C. Alberts, filed May 1, 1943.

20. Plaintiff's Proposed Findings of Fact and Conclusions of Law submitted on June 18, 1943.

21. Findings of Fact and Conclusions of Law submitted by defendants on June 25, 1943.

22. Findings of Fact and Conclusions of Law entered July 12, 1943.

23. Memorandum of Judge Igoe filed July 12, 1943.

24. Final Judgment entered July 12, 1943.

2035 25. Plaintiff-Appellant's Notice of Appeal filed July 22, 1943.

26. Bond on Appeal.

27. Plaintiff-Appellant's Statement of Points.

27a. Order transmitting original Court exhibits to Court of Appeals.

28. Plaintiff-Appellant's Designation of Contents of Record on Appeal.

29. Pre-trial discovery testimony of Kenneth R. Larson given before Judge Igoe on March 27, 1943 (Plaintiff's Exhibit 63).

Print only lines 23 to 26, inclusive, of p. 1 but omit "Proceedings Had And" in line 23 thereof; print pp. 26 to 74, inclusive, but omit the first line of p. 26 and the last four

lines of p. 74; and print p. 76 but omit the first two lines thereof. Omit all other pages not expressly included.

30. Deposition testimony of Walter Carlsen taken April 13, 1943, and Notary Public's certificates attached thereto (Plaintiff's Exhibit 62).

Print only lines 11 to 16, inclusive, of p. 1, and print pp. 3 to 84, inclusive.

31. Deposition testimony of Joseph Johnson taken April 14, 1943 (Plaintiff's Exhibit 17).

Print pp. 1 to 89, inclusive, but omit all but lines 11 to 17, inclusive, of p. 1, p. 2, the last eight lines of p. 46, last five lines of p. 77, p. 78, and the first seventeen lines of p. 79.

32. Deposition testimony of Frederick Glade Wacker taken April 23, 1943 (Defendants' Exhibit 78).

Print lines 11 to 18 of p. 1, and pp. 3 to 114, inclusive, but omit last six lines of p. 65, all but last six lines of p. 66, and lines 4 to 8 and lines 15 to 17, inclusive, of p. 114.

2036 The Wacker deposition testimony shall be inserted at page 609 of the trial transcript where read by Mr. Ooms prior to Mr. Wacker's cross-examination and re-direct testimony given at the trial.

33. Transcript of testimony taken at the trial, omitting—

Page 1, lines 1 to 10, incl.

Page 3 to 65, incl.

Page 136, last 8 lines.

Page 137.

Page 213, last 4 lines.

Page 214.

Page 215, lines 1 to 4, incl.

Page 307, last 5 lines.

Page 308.

Page 369, lines 17 and 18.

Page 379, last 5 lines.

Page 380.

Page 381, lines 1 to 5, incl.

Page 382, lines 10 to 13, incl.

Page 464, last 6 lines.

Page 465.

Page 466, lines 1 to 5, incl.

Page 489, last 3 lines.

Page 524, last 5 lines.

Page 525.
 Page 526, lines 1 to 6, incl.
 Page 602, last 9 lines.
 Pages 603 to 608, incl.
 Page 609, lines 1 to 8, incl.
 Page 611, last 5 lines.
 Page 632, last 11 lines.
 Page 633.
 Page 634, all but last 3 lines.
 Page 636.
 Page 637, lines 4 to 13, incl.
 Page 638, all but last 3 lines.
 Page 655, all but first 4 lines.
 Page 656, lines 1 to 5, incl.
 Page 711, lines 4 and 5.
 Page 721, lines 2 to 6, incl.
 Page 722, all but last line.
 Page 767, last 3 lines.
 Page 796, last line.
 Page 797.
 Page 798, all but last 4 lines.
 Page 872, last 3 lines.
 Page 894, last 8 lines.
 Page 895.
 Page 896, lines 1 to 6, incl.
 Page 976, last 7 lines.
 Page 977.
 Page 978, lines 1 to 6, incl., and last 5 lines.
 Page 979 and 980.
 Page 981, line 1.
 Page 1029, last 2 lines.
 2037. Page 1058, last 6 lines.
 Page 1059.
 Page 1060, lines 1 to 4, incl.
 Page 1135, last 5 lines.
 Page 1136.
 Page 1137, lines 1 to 4, incl.
 Page 1166, last 5 lines.
 Page 1167, first 3 lines.

34. Plaintiff's Documentary Exhibits

3. Contract of Dec. 20, 1940 between Snap-On and Larson Precision, with assignment of Larson Application Ser. No. 232,723 by Snap-On to Larson and Precision.
4. October 26, 1928 Letter, Snap-On to Larson.

7. November 11, 1940 Letter, Snap-On to Precision.
8. October 18, 1938 Letter, Alberts to Snap-On.
- 8-A. Larson Affidavit of October 18, 1938.
10. December 19, 1940 Letter, Albert to Snap-On (Same as Defendants' Exhibit 69).
13. Alberts Memorandum of Dec. 18, 1930, re conference of Nov. 28, 1940.
16. December 26, 1940 Letter, Fidler to Raftery.
18. Snap-On and Precision Agreement of January 16, 1941.
19. Snap-On and Precision supplemental Agreement (Rider) of March 26, 1941.
20. January 31, 1941 Letter, Alberts to Krichiver.
21. Letters of 4/27/40, 7/15/40, 12/10/40, 1/9/41 and 1/29/41 referred to in Plaintiff's Exhibit 20.
22. December 26, 1940 Letter, Fidler to Alberts.
23. December 31, 1940 Letter, Fidler to Hobbs.
24. Drawings of Larson Patent No. 2,312,104 of Feb. 23, 1943.
25. Certified Copy of Original Petition and Oath of Application of Larson Patent No. 2,312,104 of Feb. 23, 1943.
26. June 30, 1941 Letter, Wacker to Fidler.
29. December 6, 1940 Letter, Fidler to Hobbs.
30. Letter of December 18, 1940, Lindsey to Alberts (Same as Defendants' Exhibit 74).
- 2038 31. December 18, 1940 Letter, Lindsey to Hobbs.
32. December 18, 1940 Letter, Alberts to Hobbs.
33. December 18, 1940 Letter, Hobbs to Precision and Larson (Same as Defendants' Exhibit 67).
34. December 19, 1940 Letter, Hobbs to Alberts.
35. December 19, 1940 Letter, Hobbs to Precision.
36. December 23, 1940 Letter, Fidler to Hobbs.
37. December 26, 1940 Letter, Fidler to Hobbs.
38. December 26, 1940 Letter, Hobbs to Alberts.
39. December 28, 1940 Letter, Fidler to Hobbs.
40. December 28, 1940 Letter, Alberts to Hobbs.
41. December 30, 1940 Letter, Hobbs to Precision.
42. December 30, 1940 Letter, Hobbs to Fidler.
43. January 2, 1941 Letter, Hobbs to Alberts.
44. January 4, 1941 Letter, Hobbs to Fidler and enclosed statement of wrenches on order.
45. Letter of January 6, 1941, Fidler to Hobbs.
46. July 2, 1941 Letter, Fidler to Hobbs.

47. July 3, 1941 Letter, Hobbs to Precision.
48. July 16, 1941 Letter, Precision to Hobbs.
49. July 21, 1941 Letter, Hobbs to Fidler.
50. December 19, 1940 Letter, Hobbs to Alberts.
51. Photostatic Copy of Drawings (2 sheets) of second Larson Application.
56. Photostatic Copy of Interference Exhibit 27 Drawing (Defendants' Exhibit 9 is the original drawing).
57. Standard Thomasma Drawing used by Salmon (Same as Defendants' Exhibit 22).
58. Salmon's Work Sheet (Same as Defendants' Exhibit 12).
59. Memorandum of Dec. 11, 1940 entitled "Minimum Terms for Total Settlement".
60. June 3, 1940 Letter, Wacker to Fidler.
61. May 31, 1940 Letter, Fidler to Wacker.
2039. 61-A. Copy of Patent Office Examiner's Decision of May 29, 1940.
- 64-A. Stipulation re certified copy of Larson application Serial No. 232,723 as filed, Plaintiff's Exhibit 64.
65. Larson Patent No. 2,279,792 in suit.
66. Zimmerman Patent No. 2,283,888 in suit.
67. Zimmerman Patent No. Re. 22,219 in suit.
68. Stipulation with respect to certain Exhibits.
35. Defendants' Documentary Exhibits
 4. Contract of December 20, 1940 between Ammeo, Larson and Precision.
 5. Contract of December 20, 1940 between Ammeo and Snap-On.
 9. Drawing, Interference Exhibit 27.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 56.)
 11. November 5, 1940 memorandum letter, Wacker to Fidler.
 12. Salmon Work Sheet.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 58.)
 13. Fidler Memoranda of Oral Reports of Investigator.
 14. Draft of Proposed Agreement between Ammeo and Snap-On, Precision and Larson.
 15. Draft of Proposed Agreement between Ammeo and Snap-On.
 16. Draft of proposed agreement between Ammeo and Precision and Larson.

17. June 25, 1941 letter, Wacker to Thomasma.
18. July 1, 1941 letter, Thomasma to Wacker.
19. December 27, 1940 letter, Wacker to Fidler.
21. Thomasma Affidavit executed November 15, 1940.
- 2040 22. Thomasma Drawing used by Salmon.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 57.)
- 22-A. Bottom portion of Defendants' Exhibit 22.
26. John A. Wise Invoices dated 8/10/40 to 1/4/41.
27. June 27, 1942 receipt, Thomasma to Fidler.
28. April 1, 1941 letter, Wacker to Thomasma.
29. April 16, 1941 letter, Thomasma to Wacker.
30. April 21, 1941 letter, Wacker to Thomasma.
31. June 4, 1941 letter, Wacker to Thomasma.
32. June 21, 1941 letter, Wacker to Thomasma.
33. June 25, 1941 letter, Wacker to Thomasma.
34. July 2, 1941 letter, Fidler to Wacker.
- 34-A. June 30, 1941 letter, Thomasma to Fidler.
35. July 8, 1941 letter, Wacker to Thomasma.
36. July 28, 1941 letter, Wacker to Thomasma.
37. March 25, 1942 letter, Thomasma to Wacker.
38. April 1, 1942 letter, Thomasma to Wacker.
39. April 22, 1942 letter, Thomasma to Wacker.
40. April 28, 1942 letter, Wacker to Thomasma.
41. June 12, 1942 letter, Wacker to Thomasma.
43. October 10, 1940 letter, Fidler to Wacker.
44. April 21, 1941 letter, Wacker to Fidler.
45. June 20, 1941 letter, Fidler to Thomasma.
46. June 24, 1941 letter, Thomasma to Fidler.
47. June 25, 1941 letter, Wacker to Fidler.
48. June 27, 1941 letter, Fidler to Thomasma.
49. June 30, 1941 letter, Thomasma to Fidler.
50. December 1, 1941 letter, Thomasma to Fidler.
- 2041 52. Salmon Invoice of Dec. 27, 1940.
60. February 3, 1941 letter, Wacker to Fidler.
61. Larson-Snap-On Agreement of Sept. 28, 1938.
62. November 11, 1940 letter, Alberts to Larson and Carlsen.
63. December 4, 1940 letter, Hobbs to Precision.
64. Draft of Letter, dated December 4, 1940, proposed to be sent by Hobbs to Fidler.
65. December 4, 1940 Statement of Haight, Goldstein & Hobbs.

66. December 6, 1940 Letter, Hobbs to Fidler.
67. December 18, 1940 Letter, Hobbs to Larson.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 33.)
68. December 19, 1940 Letter, Lindsey to Alberts.
69. December 19, 1940 Letter, Alberts to Snap-On.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 19.)
70. Alberts' Memorandum dated November 21, 1940.
71. December 3, 1940 Letter, Alberts to Fidler.
72. Alberts' Memorandum dated Dec. 11, 1940.
- 73-A. December 12, 1940 Letter, re Defendants' Ex. 72, Alberts to Snap-On.
73. December 17, 1940 Letter, Alberts to Fidler.
74. December 18, 1940 Letter, Lindsey to Alberts.
(Not to be reproduced in record on appeal. Is a duplicate of Plaintiff's Exhibit 30.)
75. December 19, 1940 Letter, Hobbs to Alberts.
76. December 19, 1940 Letter, Alberts to Lindsey.
77. Notice of Taking Interference Testimony on Dec. 23, 1940.
79. October 13, 1939 Letter, Fidler to Wacker.
80. November 9, 1939 Letter, Wacker to Fidler.
81. November 13, 1939 Letter, Fidler to Wacker.
- 81-A. Dun & Bradstreet Report on Precision.
82. November 21, 1939 Letter, Fidler to Wacker.
- 82-A. Summary of Precision Articles of Incorporation.
- 2042 83. November 24, 1939 Letter, Wacker to Fidler.
84. June 4, 1940 Letter, Fidler to Wacker.
85. July 22, 1940 Letter, Fidler to Wacker.
86. July 24, 1940 Letter, Wacker to Fidler.
87. August 5, 1940 Letter, Fidler to Wacker.
88. August 16, 1940 Letter, Fidler to Wacker.
89. September 20, 1940 Letter, Fidler to Wacker.
90. October 19, 1940 Letter, Fidler to Wacker.
91. November 4, 1940 Letter, Fidler to Wacker.
- 91-A. October 31, 1940 Memo Letter, Strodtz and McFarland to Fidler.
92. November 23, 1940 Letter, Fidler to Wacker.
93. November 23, 1940 Letter, Fidler to Wacker.
94. December 21, 1940 Letter, Fidler to Wacker.
95. December 26, 1940 Letter, Fidler to Wacker.
96. December 26, 1940 Letter, Fidler to Wacker.

97. December 28, 1940 Letter, Fidler to Wacker.
98. January 24, 1941 Letter, Fidler to Wacker.
99. January 31, 1941 Letter, Fidler to Wacker.
100. June 27, 1941 Letter, Fidler to Wacker.
101. November 29, 1940 Letter, Hobbs to Fidler.
102. December 6, 1940 Letter, Hobbs to Thomasma.
103. November 19, 1940 Letter, Alberts to Raftery.

36. Plaintiff's Physical Exhibits

14. Raftery Notebook dated Oct. 7, 1940.
15. Raftery Notebook dated Oct. 30, 1940.
52. Wrench Model from which Application Drawings of Larson Patent No. 2,312,104 were made.
64. Certified copy of Larson Application Ser. No. 232,723, as filed (on which Larson Patent No. 2,279,792 issued).

2043-37. Defendant's Physical Exhibits:

1. Wrench manufactured by Ammeo and sold to Snap-On.
2. Wrench manufactured by Precision in 1939-1940 and covered by Larson Application in Interference.
3. Wrench presently manufactured and sold by Precision to Snap-On and charged to infringe.
6. Certificate of State of Illinois re commission of Esther Meltzer as Notary Public.
7. Board of five wood patterns (Interference exhibits).
8. Board of wrenches and parts (Interference exhibits).
10. Transcribed depositions and portions thereof taken on behalf of Larson in Interference 77,565.
104. Wrench comprising Larson Exhibit 31 in Interference 77,565.
105. Wrench comprising Larson Exhibit 37 in Interference 77,565.
106. File of Documentary Exhibits offered in evidence during taking of Larson's proofs in Interference No. 77,565.

38. Earlier forms of pleadings of the respective parties to be transmitted to Court of Appeals along with the physical exhibits and not to be reproduced in the printed record on appeal.

Civil Action No. 4382.

- a. Complaint filed June 15, 1942.
- b. Amended Complaint filed July 22, 1942.

c. Answer of Defendants to Amended Complaint filed August 6, 1942.

d. Answer of Defendants To Amended and Supplemental Complaint filed December 14, 1942.

e. Notice of additional defenses to be relied upon at trial by defendants served on plaintiff December 17, 1942.

f. Amendment to Answer to Amended and Supplemental Complaint filed December 30, 1942.

2044 Civil Action No. 4451.

g. Petition for Declaratory Decree filed July 6, 1942.

h. Amended Petition for Declaratory Decree filed July 21, 1942.

i. Second Amended Petition for Declaratory Decree filed July 31, 1942.

j. Respondent's Answer to Second Amended Petition for Declaratory Decree and Counterclaim filed September 23, 1942.

k. Answer of Intervenor to Respondent's First Counterclaim filed September 8, 1942.

l. Answer of Petitioner to Respondent's Second Counterclaim filed December 14, 1942.

m. Answer of Intervenor to Respondent's Amended and Supplemental First Counterclaim filed December 14, 1942.

n. Motion to Dismiss Certain Portions of Second Amended Petition and Petitioner's Answer to Respondent's First Counterclaim filed January 13, 1942.

o. Motion to Dismiss Certain Portions of Intervenor's Answer to Respondent's First Counterclaim filed January 13, 1942.

Davis, Lindsey, Smith & Shotts,
Attorneys for Plaintiff.

Harry W. Lindsey, Jr.,
Raymond E. Fidler,

Of Counsel.

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April 14, 1942.

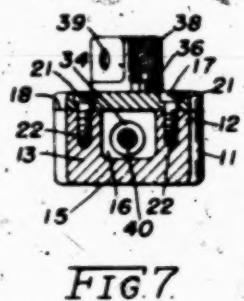
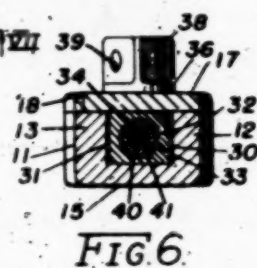
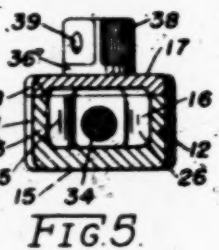
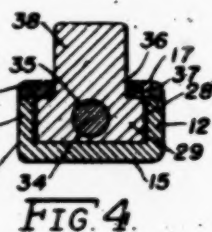
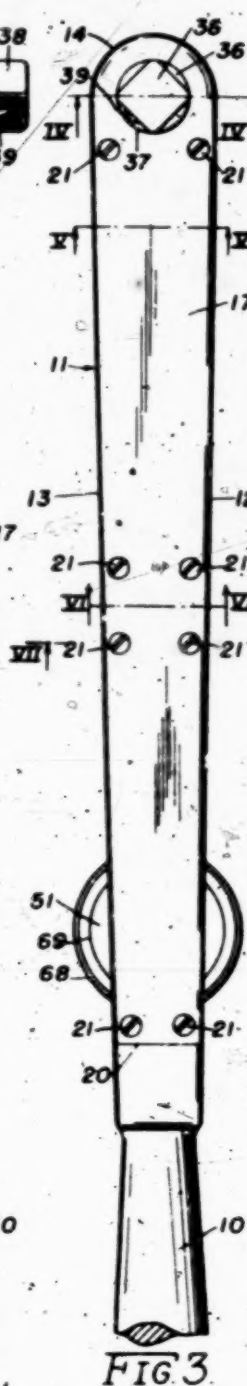
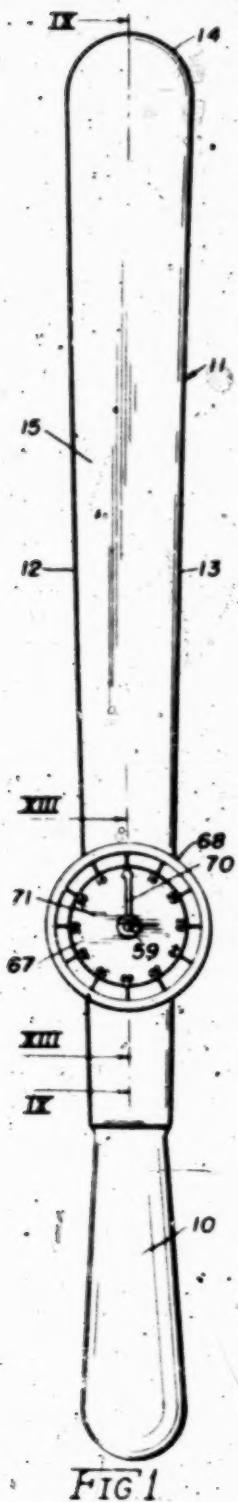
K. R. LARSON

2,279,792

TORQUE WRENCH

Filed Oct. 1, 1938

2 Sheets-Sheet 1



INVENTOR
KENNETH R. LARSON

BY *Harry C. Selby*
ATTORNEY

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April 14, 1942.

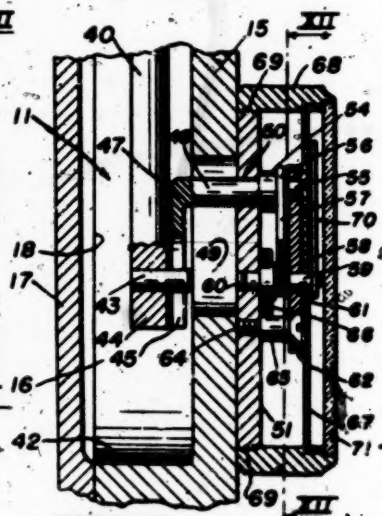
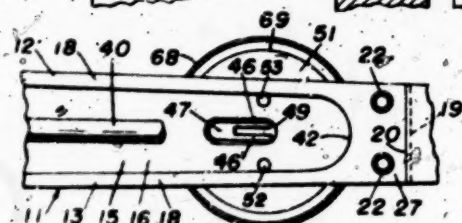
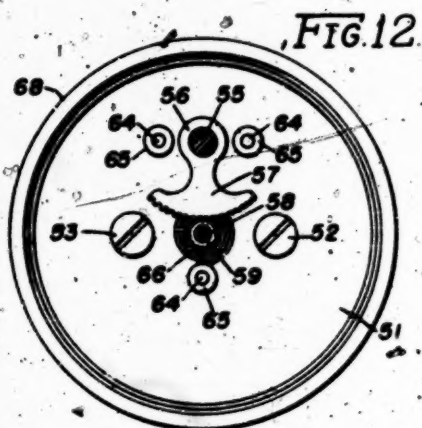
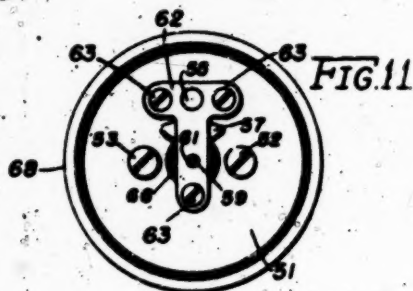
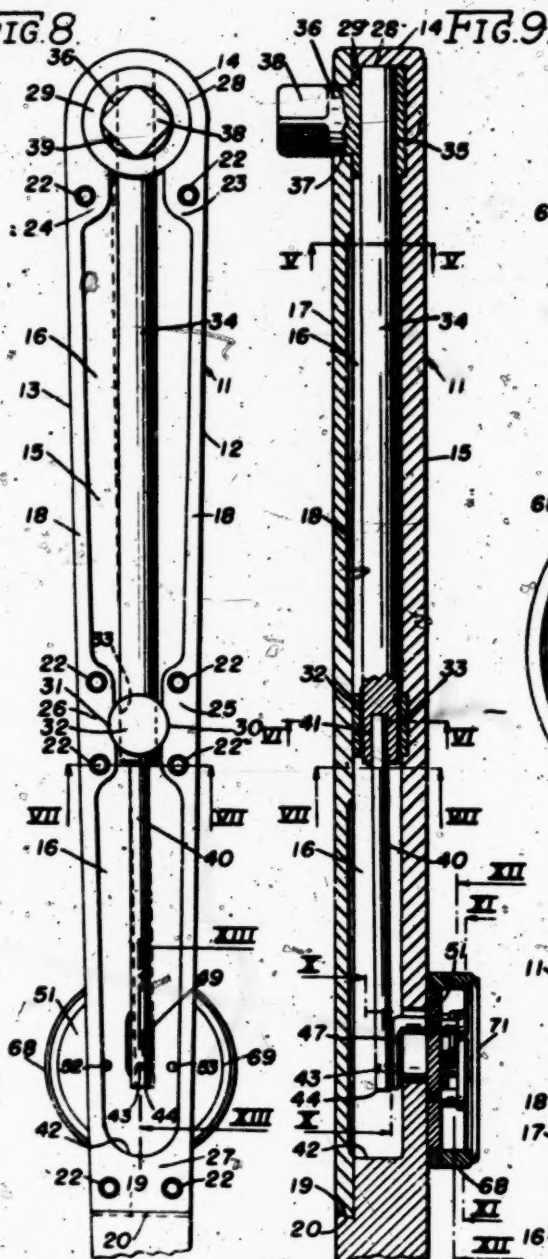
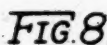
K. R. LARSON

2,279,792

TORQUE WRENCH

Filed Oct. 1, 1938

2 Sheets-Sheet 2



INVENTOR
KENNETH R. LARSON

BY *Harry C. Seuter*
ATTORNEY

UNITED STATES PATENT OFFICE

2,279,792

TORQUE WRENCH

Kenneth E. Larson, Des Plaines, Ill., assignor, by direct and mesne assignments, to Automotive Maintenance Machinery Co., North Chicago, Ill., a corporation of Illinois

Application October 1, 1938, Serial No. 232,723

22 Claims. (Cl. 245-1)

This invention relates to turning devices and more particularly to nut turning wrenches, although certain features thereof may be employed with equal advantage for other purposes.

If contemplates more especially the provision of a simple, dependable, accurate and compact torque wrench that will instantly measure the force supplied in nut turning and similar movements.

Numerous types of torque turning wrenches have heretofore been proposed, but these have not proven entirely satisfactory owing to their substantially increased bulk over ordinary nut turning tools and their failure to render a dependable and uniform service. In gauging the torque applied in any nut or other fastening expedient such as a screw. There has been a long felt want for a torque turning tool that is simple, compact, dependable, accurate, and instantly indicates the desired tension or torque applied to a nut or other fastening expedient.

One object of the present invention is to simplify the construction and improve the operation of devices of the character mentioned.

Another object is to provide a simple and compact torque indicating wrench that is dependable in operation.

Still another object is to provide an improved turning tool having dependable torque indicating means associated therewith for measuring the torque applied in the turning operation.

A further object is to provide a turning tool with a single beam for flexing responsive to the application of force in turning fastening expedients such as nuts, screws, and the like to measure the torque with which such is being applied.

A still further object is to provide an improved nut turning wrench having a single beam in the form of a uniform rod that is operatively connected to a torque indicator at its point of greatest flexing displacement.

Still a further object is to provide a wrench having a single elongated rod disposed longitudinally therein for flexing responsive to the application of force in nut turning to indicate the torque of applied force commensurate with the instant of flexing at one extremity thereof.

Other objects and advantages will appear from the following description of an illustrative embodiment of the present invention.

In the drawings:

Figure 1 is a plan view of a wrench embodying features of the present invention.

Figure 2 is a side view in elevation of the wrench shown in Figure 1.

Figure 3 is a bottom plan view of the wrench shown in Figure 1, part of the handle being broken away for convenience.

Figure 4 is a sectional view taken substantially along line IV—IV of Figure 3.

Figure 5 is a sectional view taken substantially along line V—V of Figure 3, and Figure 9.

Figure 6 is a sectional view taken substantially along line VI—VI of Figures 3 and 9.

Figure 7 is a sectional view taken substantially along line VII—VII of Figure 8.

Figure 8 is a bottom view of the wrench shown in Figure 3 with the bottom plate removed to illustrate the inner construction, the handle being broken away for convenience.

Figure 9 is a sectional view taken substantially along line IX—IX of Figure 1.

Figure 10 is a fragmentary broken view taken substantially along line X—X of Figure 9.

Figure 11 is a plan view of an indicator mechanism viewed substantially from line XI—XI of Figure 9 with the dial removed therefrom.

Figure 12 is a sectional view of the indicator mechanism taken substantially along line XII—XII of Figures 9 and 13.

Figure 13 is an enlarged sectional view of the indicator mechanism taken substantially along line XIII—XIII of Figures 1 and 8.

The structure selected for illustration comprises a solid handle member 10 of standard construction having an elongated chambered wrench shank or body 11 cast or otherwise shaped to present inclined side walls 12 and 13 to terminate in a semi-circular extremity or head 14. The handle 10 with its chambered body 11 is preferably though not essentially cast from an aluminum alloy so as to possess the desired strength and lightness for convenience and manipulation in nut turning as will appear more fully hereinafter. It will be observed that the handle shank or body 11 consists of the inclined side-walls 12—13 which converge in the direction of the handle 10 with an intermediate body-wall 15 formed integral therewith to define an elongated chambered interior 16.

The shank 11 is normally covered by a solid plate 17 that is shaped to conform with the configuration of the body wall 15 to confront therewith and serve as a complement of an open edge 18 that extends around the side walls 12—13 of the semi-circular extremity 14, the face plate 17 being shaped to correspond therewith and its lower inclined edge 19 cooperates with a correspondingly inclined recess 20 (Figures 2 and 9) formed in the shank 11 proximate to the solid

handle 10. A plurality of threaded screw fasteners 21 project through apertures in the plate 17 to engage correspondingly threaded bores 22 in the edge 19 that extends along the side walls 12—13 of the handle shank or body 11 and end 14, thereby enclosing the chamber 16 and confining the torque resisting instrumentalities and measuring instrumentalities to be described hereinafter.

It will be noted that the handle shank or body 10 and especially the inclined side walls 12—13 are reinforced in the region of the threaded bores 22 by increasing the thickness of the cast metal as at 23—24, 25—26 and 27 which is a solid portion of the handle shank 11 proximate to the lower extremity of the chamber 16 provided therein. The semi-circular head 14 of the body 11 is provided with a circular recess 28 corresponding in curvature therewith and measured to receive an accurately fitting revoluble or turning head member 29 of corresponding shape and size for rotary association therein. It is to be noted that the circular recess 28 communicates with the chamber 16 in the handle shank 11, and the entire head portion is reinforced by the enlarged thicknesses 23—24 of the side walls 12—13 in the region of the recess 28.

Now, then, the enlarged thicknesses 25—26 of the side walls 12—13 are approximately along a transverse median line of the handle 10 and its contiguous shank or body 11, and these are circularly recessed to provide interrupted arcuate portions 30 and 31 which receive a cylindrical bearing or bushing 32 of pressed or other suitable material. The bushing 32 is provided with a diametrically disposed bore 33 which freely receives a closely fitting cylindrical rod 34 that extends therethrough from the revoluble member 29 to serve as a torque resisting beam.

To this end, the cylindrical elongated rod 34 is, in this instance, of uniform diameter and projects diametrically through the revoluble member 29 as at 35 for fixed engagement therewith to constitute a single acting unit or member. As shown, the revoluble member 29 has a transversely disposed cylindrical extension 36 which is journaled in a correspondingly shaped aperture 37 provided in the cover plate 17. The cylindrical extension 36 is, in this instance, formed integral with the revoluble member 29 and terminates beyond the cover plate 17 in a polygonal shank 38 for registry with a correspondingly shaped and sized recess formed in the wrench socket or other turning implement as commercial practice may dictate for use therewith.

It will be observed, therefore, that any wrench socket of standard construction may be detachably associated with the journaled shank 38 that is preferably though not essentially provided with a spring impelled ball detent 39 to preclude accidental separation therewith. While the elongated beam 34 terminates just beyond the bearing or bushing 32, in this instance, which serves as a floating mount therefor, it should be appreciated that such may extend appreciably therebeyond depending upon the dictates of commercial practice. It has been found more proficient, however, from a manufacturing standpoint to terminate the elongated cylindrical beam 34 just beyond the floating mount 32 thereof and join therewith a smaller elongated rod 40 of comparatively smaller diameter for pressed fitting axial engagement in an end bore 41 provided in

the free extremity of the elongated beam 34. This effects the equivalent of an integral jointer between the beam 34 and its reduced extension 40 that terminates proximately to the lower end 42 of the chamber 16 in the body 11.

It should be noted that the beam 34 together with its reduced extension 40 would function exactly the same even though they were turned or otherwise shaped from a single unit; however, such construction would be somewhat more expensive from a production standpoint than the pressed co-axial fitting relationship between the rods 34 and 40 serving as a floating beam on the mount 32. The reduced rod 40 has a pin 43 which projects transversely therethrough proximate to the lower extremity 44 thereof for registry between two furcations 45—46 in a lever 47 that is disposed in the chamber 16 and has an offset arm 48 extending through an opening 49 (Figure 13) in the wall 15 of the body 11.

The offset arm 48 is journaled in a correspondingly sized bore 50 provided in the bottom plate 51 constituting a part of the indicator mechanism as will appear more fully hereinafter. The bottom plate 51 constitutes a part of the indicator casing and is fixed to the wall 15 of the wrench body 11 by means of threaded studs 52—53. The lever arm 48 has an enlarged peripheral shoulder 54 terminating in a reduced stud 55 over which is pressed an apertured arm 56 of a gear segment 57. The gear segment 57 meshes with a pinion 58 mounted on a stub shaft 59 which is journaled in axial aligned bores 60 and 61 provided in the casing plate 51 and a bracket plate 62 in parallel spaced relation therewith.

The bracket plate 62 is, in this instance, substantially T-shaped and is held or mounted in spaced parallel relation to the indicator casing bottom 51 by means of threaded studs 63, in this instance three, projecting through the extremities thereof for engagement with correspondingly threaded bores 64 (Figure 12) formed in the bottom indicator casing plate 51. It should be observed that the fastening studs 63 are provided with an enlarged shank 65 serving as a spacer collar beyond the reduced threaded extremity thereof that engages the correspondingly threaded bores 64 (Figure 13), thereby maintaining the T-shaped bracket 62 in spaced relation with the indicator casing bottom plate 51. The bracket 62 also serves as a bearing for the reduced extremity 66 of the lever arm 48 to insure the proper mounting of the gear segment 57 and maintaining the meshing engagement thereof with the pinion 58.

A spiral spring 68 envelops the stub shaft 59 on which the pinion 58 is mounted or integrally formed, to normally urge or return the indicator instrumentalities to an initial position. A calibrated dial 67 is mounted in a cylindrical collar 69 that threadedly engages the bottom plate 51 as at 69 to constitute a casing for the indicator instrumentalities. A pointer 70 is fixed to the reduced extremity of the pinion shaft 59 which projects beyond the indicator dial 67 to designate in foot pounds the torque exerted in turning a nut or other fastening expedients by proper engaging attachment with the polygonal shank 38 while the turning force is applied to the handle 10. A glass or other transparent crystal 71 is fitted to the indicator casing 69 to preclude obstruction to the pointer 70 and avoid the entrance of foreign substances therein which would

impair the accuracy and operation of the indicating instrumentalities.

This flexes the beam 34-40 in one direction or the other depending upon the direction of the applied force to the handle 10, and this flexing will vary proportionately to the force applied to flex the beams 34-40 as indicated by the dotted outline thereof in Figure 8. The beam 34 together with its reduced extension 40 is preferably turned or otherwise shaped from a high quality steel alloy that has limited flexibility and a comparatively high elastic limit so that it will uniformly flex and return to its initial position to provide accurate readings within the range and elastic limit thereof without variation within ordinary requirements. Any number of high quality steel alloys may be used for this purpose, and by way of example the beam 34-40 can be advantageously constructed from an oil hardened tool steel.

It will be observed from the foregoing description of an illustrative embodiment constituting the subject matter hereof, that clockwise rotation imparted to the handle 10 (viewed from Figure 1) during the engagement of the polygonal shank 38 with a nut or other fastening implement, will cause flexing of the beam ends 34-40 as shown in the dotted outline in Figure 8. This action will cause slight longitudinal displacement of the beam 34-40 relative to its mount 32 and the latter will simultaneously rotate for a fractional extent to facilitate the displacement of the beam 34-40 in opposite directions responsive to the flexing thereof. The flexing of the beam 34-40 will correspondingly displace the pointer 18 which is connected to indicator instrumentalities calibrated to the selected size or capacity of the beam 34-40.

Then, too, it should be appreciated that the attachment of the indicator casing 88 with its bottom plate 51 on the body wall 15 always maintains the indicator instrumentalities in operative connection with the beams 34-40, thereby rendering the cover plate 17 removable for inspection, replacement, and cleansing purposes without interfering with the setting and operative connection between the beam extensions 40 and the indicator lever 47. The operative connection of the indicator lever 47 to the terminal free end of the beams 34-40 also provides for the measurement of the torque at the point of maximum deflection of the torque resisting beam 34-40, thereby affording more accurate measurements than would otherwise be possible.

With the arrangement of parts above described, a very simple, dependable and accurate torque resisting and measuring beam 34-40 has been incorporated into a wrench or other turning devices without sacrificing compactness or encumbering the turning tool with any objectionable added weight. Various changes may be made in the embodiment of the invention herein specifically described without departing from or sacrificing any of the advantages of the invention or any features thereof, and nothing herein shall be construed as limitations upon the invention, its concept or structural embodiment as to the whole or any part thereof except as defined in the appended claims.

I claim:

1. In a torque wrench, the combination with a handle member, of a turning head member journaled in one extremity of said handle member, a yieldable torque resisting beam anchored in said turning head member, a supporting bear-

ing carried by said handle member and engaging said beam intermediate the extremities thereof, and torque indicating means operatively connected to the free extremity of said yieldable beam.

2. In a torque wrench, the combination with a handle member, of a turning head member journaled in one end of said handle member, a yieldable torque resisting beam anchored in said turning head member, a bearing slidably engaging said beam intermediate the extremities thereof and journaled in said handle member, and calibrated indicating means operatively connected to the free extremity of said yieldable beam.

3. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing, and torque indicating means operatively connected to the free extremity of said yieldable rod which is displaced responsive to applying force to said handle means.

4. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journaled in said handle member and engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated yieldable rod, and torque indicating means operatively connected to the free extremity of said last named rod which is displaced responsive to applying force to said handle means.

5. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated yieldable rod terminating in a free extremity beyond said bushing and extending along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said rod which is displaced responsive to applying force to said handle means.

6. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing and extending along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said rod and which extremity is displaced in response to the application of force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

7. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter, anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, and torque indicating means operatively connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

8. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, torque indicating means operatively connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means, and a cover plate attached to said chambered handle member to cooperate therewith in confining said torque resisting rod.

9. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

10. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated yieldable torque resisting rod of substantially uniform cross-section anchored at one extremity thereof to said head member, a guide in said handle member for reciprocally receiving said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said guide, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and freely cooperating with said pin connected to the free extremity of said last named rod and which extremity is

displaced in response to the application of force to said handle means with said turning head member in registry with a part to be turned.

11. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing in said chambered handle member to reciprocally receive said yieldable rod intermediate the extremities thereof, said bushing being journaled in said handle member, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

12. In a torque wrench, the combination with a chambered handle member, of a turning head member journaled in said handle member, an elongated cylindrical and yieldable torque resisting rod of substantially uniform diameter anchored at one extremity thereof to said head member, a bushing journaled in said handle member and slidably engaging said yieldable rod intermediate the extremities thereof, said elongated rod terminating in a free extremity beyond said bushing, a smaller rod of substantially uniform diameter projecting from the free extremity of said elongated rod and extending along a longitudinal median line of said handle member, a pin projecting transversely from said smaller rod extremity, torque indicating means operatively mounted on said handle member, a furcated lever extending from said indicating means into said chambered handle member and cooperating with said pin connected to the free extremity of said last named rod and which extremity is displaced in response to the application of force to said handle means.

13. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, an elongated torque resisting beam disposed substantially parallel with respect to said body and yieldably opposing relative rotation of said members, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and means projecting from the end of said beam nearest said grip portion and connecting said end of said beam with said indicating means.

14. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam having one end thereof connected to said head member and its opposite end flexibly connected with said body member, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and means connecting said opposite end of said beam with said indicating means.

15. A torque wrench comprising, an elongated body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam carried by said head member and flexibly connected to said body member, indicating means, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named with said indicating means disposed in close proximity to said grip portion where it may readily be observed by the wrench operator, and means including an extension on the end of the beam adjacent to said grip portion adapted to engage said indicating means and operate the latter as said beam is flexed.

16. A torque wrench comprising, a body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, an elongated torque resisting beam between said body and head members and having one end rigidly connected to one of said members and its other end flexibly connected to the other of said members so as to yieldingly resist relative rotation of said members, an indicator carried by one of said members in close proximity to said grip portion, and having an operating-part, and means for operating said indicator as said beam is flexed which includes an extension on said other end of said beam operably engaged with said operating part.

17. A torque wrench comprising a body member having a grip portion at one end thereof, a head member rotatably carried by the other end of said body member, a yieldable torque resisting beam between said body and head members and extending longitudinally of said body member, an indicator carried by said body member in close proximity to said grip portion and having an operating-part, and means for operating said indicator as said beam is flexed which includes a longitudinally projecting extension on the end of said beam nearest said grip portion operably engaged with said operating-part.

18. A torque wrench comprising, a body member, a head member rotatably carried by said body member, a torque resisting beam carried at one end by one of said members, means providing a pivotal connection between the other end of said beam and the other of said members, indicating means, and means for directly connecting the end portion of said beam remote from said head member to said indicating means.

19. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam having one end portion connected to said head member and extending away therefrom longitudinally of said body member, means providing a pivotal connection between the opposite end portion of said beam and said body member, indicating means, and means directly connecting the pivotally-connected end portion of said beam to said indicating means.

20. A torque wrench for use with an indicator for measuring the force applied to the work comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, an elongated torque resisting beam carried by one of said members, a flexible connection between said beam and the other of said members, whereby said beam yieldingly resists relative rotation of said members, and indicator-operating means di-

rectly connected to the end portion of said beam remote from said head member to actuate said indicator to measure the flex of said beam.

21. A torque wrench comprising, a pair of rockably connected members, one of which is adapted to be operably engaged with the work and the other is adapted to receive the pressure to be applied to the work, a torque resisting beam having one end thereof carried by one of said members and having its opposite end connected to the other of said members for yieldably resisting relative rock movement of said members, said connection being such as to provide for free flexing movement of said opposite end of said beam, indicating means, and means for directly connecting said indicating means to said beam at its end having free flexing movement.

22. A torque wrench comprising, an elongated body member, a head member rotatably connected to said body member, a substantially cylindrical torque resisting beam between said body and head members and connected thereto at its opposite end portions for yieldably resisting relative rotation of said members, indicating means, and an axial extension projecting from one end portion of said cylindrical beam and having operative engagement with said indicating means, whereby to measure the flex of said cylindrical beam responsive to the application of force to said body member.

23. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam carried by said head member and extending away therefrom longitudinally of said body member, means connecting the end portion of said beam opposite said head member to said body member, said means permitting pivotal movement as well as longitudinal slide movement of the end portion of the beam relative to said body member, indicating means, and an extension on the body-connected end portion of said beam operably connected to said indicating means for measuring the flex of said beam as said head and body members are relatively rotated.

24. A torque wrench comprising, a body member, a head member rotatably carried by said body member and having provision for engagement with the work, a yieldable torque resisting beam connected at one end portion to said head member and extending away therefrom longitudinally of said body member, means providing a pivotal connection between the opposite end portion of said beam and said body member, indicating means, and an extension on the pivotally-connected end portion of said beam operably connected to said indicating means for indicating the flex of said beam.

25. A torque wrench comprising, a chambered casing, a detachable cover plate for said casing, a head member rotatably supported in said casing adjacent one end thereof, a torque resisting beam housed in said casing and having one end connected to said head member and its other end flexibly connected to said casing at a point longitudinally removed from said head member, an indicator carried by said casing, and means supported by the casing-connected end portion of said beam and operatively connected with said indicator for operating the latter, said head member, beam, indicator, and means being so supported independently of said cover that said cover may be removed without disturbing said in-

indicator and the operative relationship of the wrench parts.

26. A torque wrench comprising an elongated chambered body member having a grip portion at the end thereof, a head member rotatably carried in the chamber of said body member, said head member having an extension adapted to receive a work-engaging member, a yieldable torque resisting beam in said chamber opposing relative rotation of said members, indicating means carried by the top wall of said chamber and operable upon relative rotation of said rotatable members, said head member, beam, indicating means, and grip portion being arranged in longitudinally disposed relation in the order named, and a detachable cover plate for said chambered body member arranged so that it may be removed without disturbing the operative relationship of the wrench parts, said cover plate having an opening through which said extension projects and being arranged so as to confine said head member against substantial axial movement between said top wall and the inner surface of said cover plate.

27. A torque measuring wrench comprising a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, said work-engaging member having a bore formed therein and extending across the axis of rotation of said work-engaging member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said bore and having its opposite end arranged to have a force applied thereto through said handle member, indicator means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work, and means operatively connecting said opposite end of said spring bar with said indicator means.

28. A torque measuring wrench comprising a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, said work-engaging member having a bore formed therein and extending across the axis of rotation of said work-engaging member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said bore, means pivotally connecting the opposite end of said spring bar to said handle member, indicator means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work, and means including an element connecting said pivotally-connected end of said spring bar with said indicator means.

29. In a torque wrench, the combination with an elongated wrench body member, of a handle member extending from one end of said body member and of substantially lesser length than said body member, a turning head member operatively connected to said body member proximate to the other end thereof, a yieldable elongated torque resisting beam extending between said handle member and said turning head member and connected to said turning head member, and calibrated indicating means operatively connected to the free extremity of said torque resisting beam to measure the flex of said yieldable

torque resisting beam responsive to applying force to said handle member.

30. In a torque wrench, the combination with a handle member, of a turning head member journaled in said handle member, an elongated and yieldable torque resisting rod interposed between said handle member and said turning head member and connected to said turning head member, a rod bearing journaled in said handle member to freely receive said rod therethrough, and calibrated indicating means operatively connected to the free extremity of said yieldable rod.

31. A torque wrench comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length thereof, said body having a longitudinally extending grip portion at one end thereof; an indicator carried by said handle member, said indicator being located at the end of said chamber nearest to said grip portion; a head member having an enlarged portion in said chamber and a relatively smaller portion extending exteriorly of said chamber and adapted to be operatively connected with the work; elongated substantially cylindrical rod means in said chamber, one end of said elongated rod means being fixedly secured to the enlarged portion of said head member and extending radially from said enlarged portion and lengthwise of said chamber toward said grip portion, said enlarged portion of said head member being so arranged and operatively connected with said handle member that it can turn relative to said handle member in proportion to the force applied to the work, the opposite end of said elongated rod means being free and unrestrained against movement in opposite directions in said chamber, said free end being moved upon turning of said enlarged portion of said head member relative to said handle member; and means between said indicator and the free end of said elongated rod means and extending angularly of the free end of said elongated rod means operatively connecting the free end of said elongated rod means to said indicator to actuate said indicator upon movement of the free end of said elongated rod means.

32. A torque wrench comprising: a handle member including a body having a chamber extending throughout substantially the full length thereof, and a grip portion extending longitudinally from said body; indicator means carried by said handle member adjacent one end of said chamber; a preassembled unit including a head member and an elongated substantially cylindrical rod means, said preassembled unit being adapted to be inserted bodily into said chamber, said head member having an enlarged portion received in said chamber and a relatively smaller portion extending exteriorly of said handle adjacent the opposite end of said chamber and adapted to be operatively connected with the work, said elongated rod means having one end thereof fixedly secured to the enlarged portion of said head member and extending lengthwise of said chamber toward said grip portion, said enlarged portion of said head member being so arranged and operatively connected with said handle member that it can turn relative to said handle member in proportion to the force applied to the work, the opposite end of said elongated rod means terminating at a point beneath said indicator means and being free and unrestrained against movement in op-

posite directions in said chamber with respect to said handle member upon turning movement of said enlarged portion of said head member relative to said handle member; and means operatively connecting the free end of said elongated rod means with said indicator means to

actuate said indicator means in response to the application of force to said handle member, said means including an operating part on said indicator means and a coupling part on the free end of said elongated rod means.

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May 19, 1942.

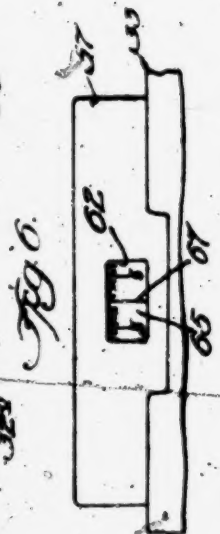
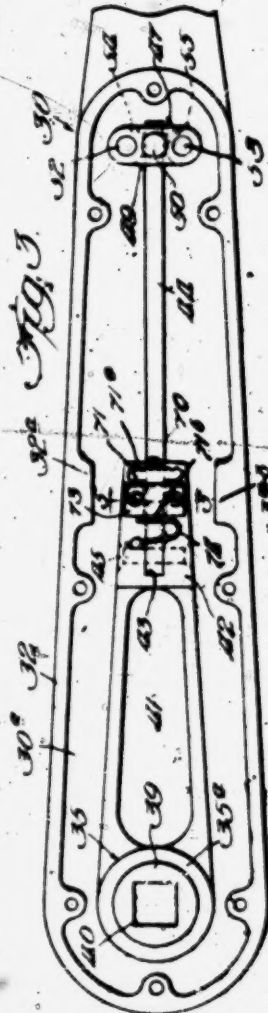
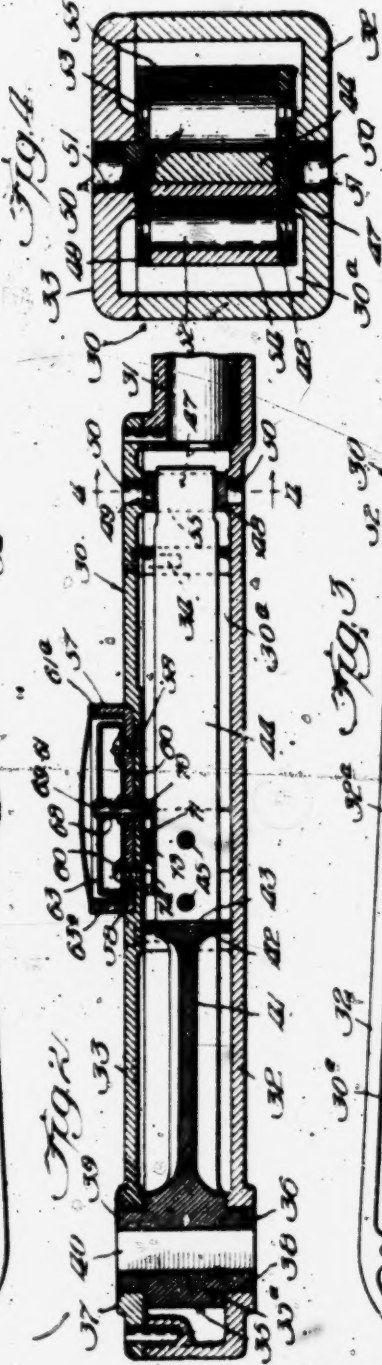
H. W. ZIMMERMAN

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TORQUE MEASURING WRENCH

Filed Nov. 22, 1937

6 Sheets-Sheet 1



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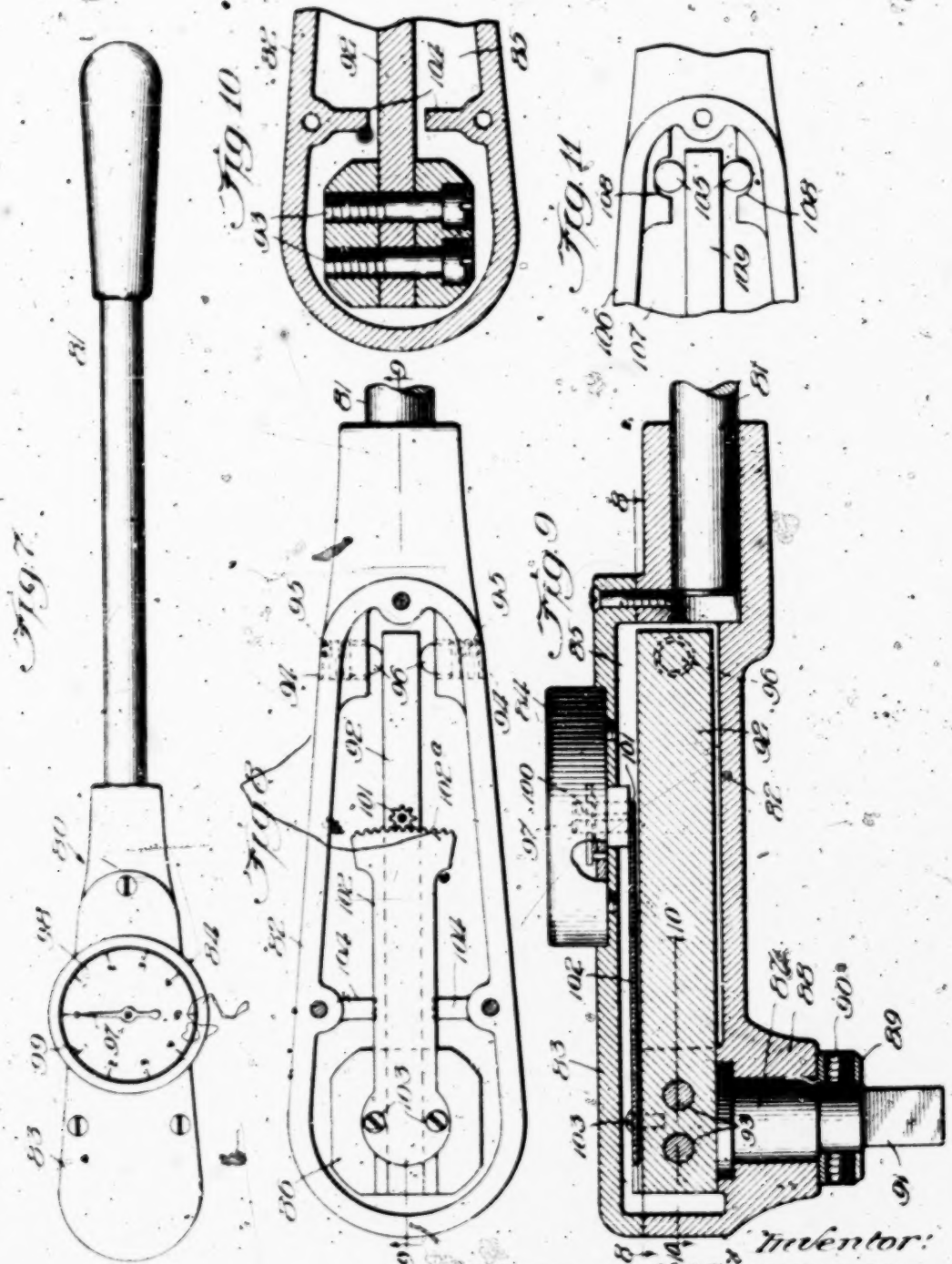
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TORQUE MEASURING WRENCH

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6 Sheets-Sheet 2



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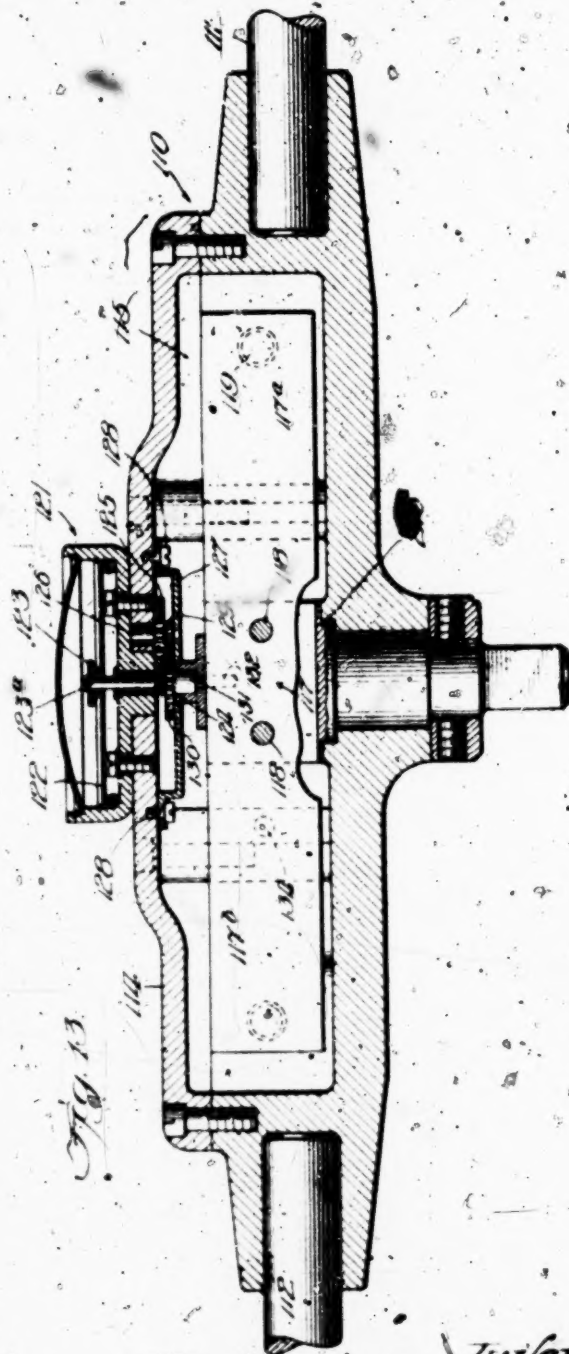
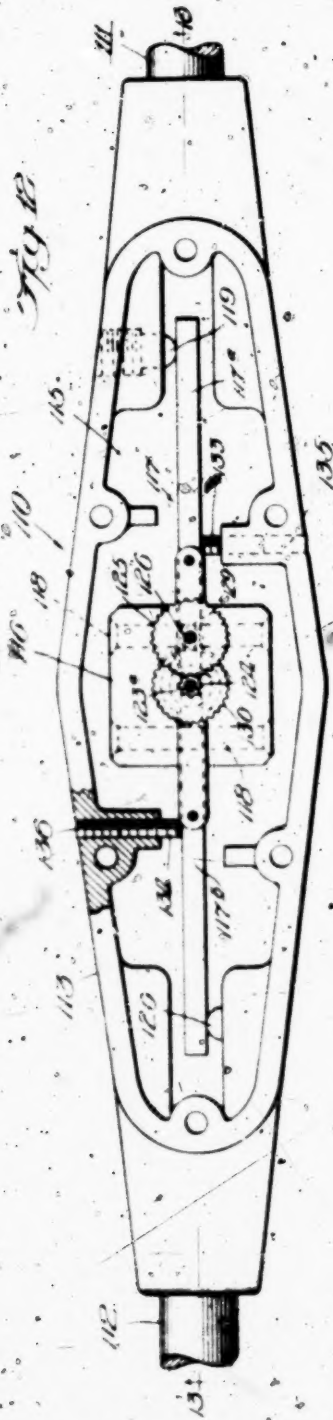
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TORQUE MEASURING WRENCH

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6 Sheets-Sheet 3



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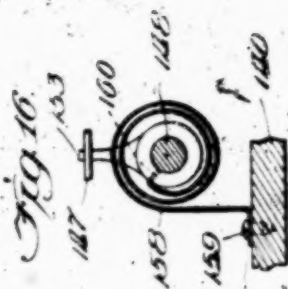
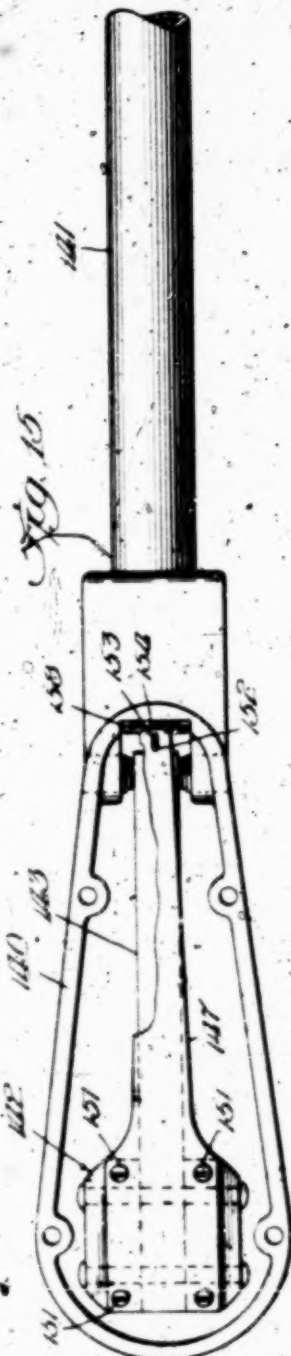
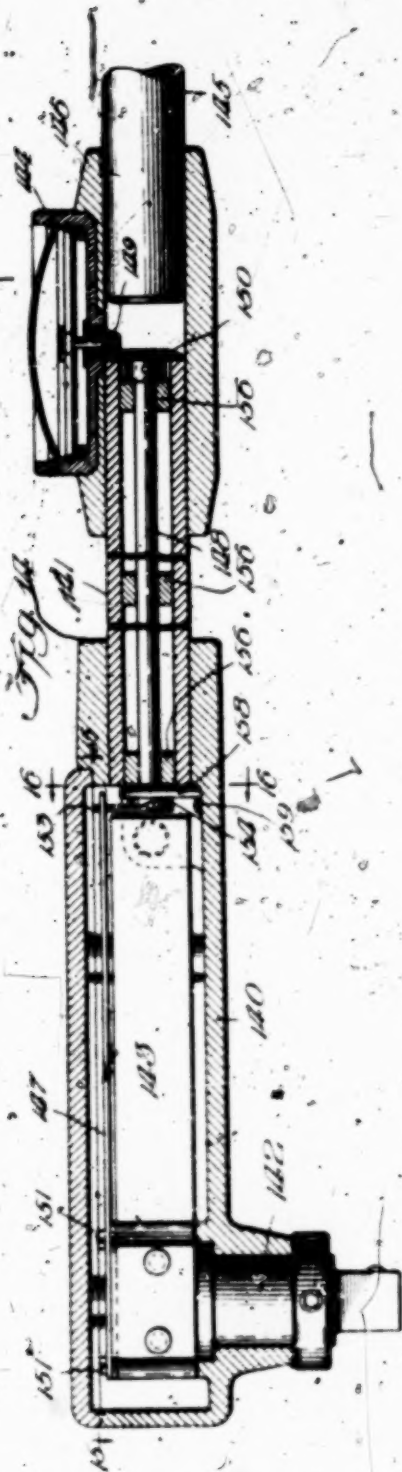
May 19, 1942.

H. W. ZIMMERMAN
TORQUE MEASURING WRENCH

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6 Sheets-Sheet 4



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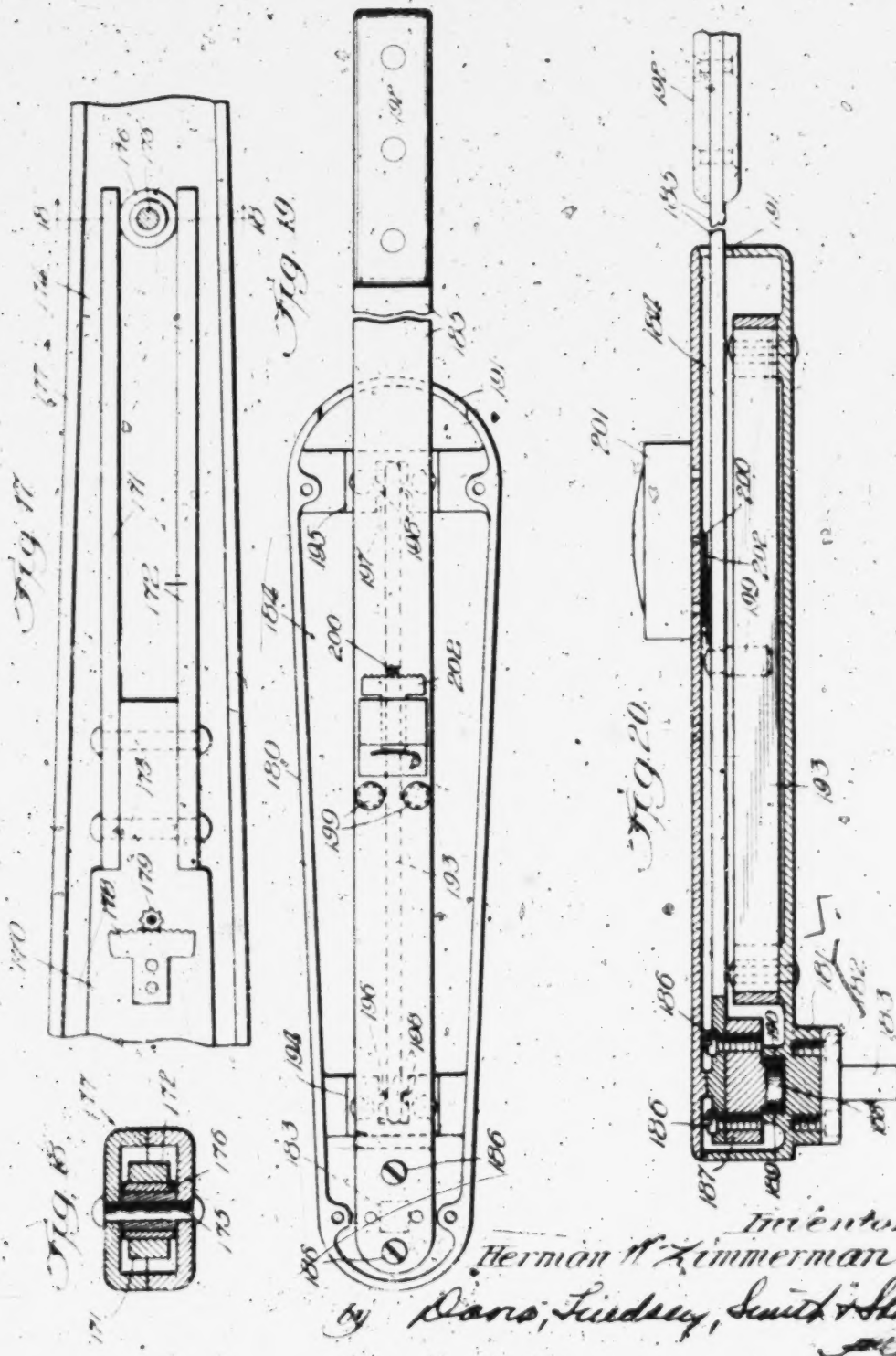
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TORQUE MEASURING WRENCH

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6 Sheets-Sheet 5



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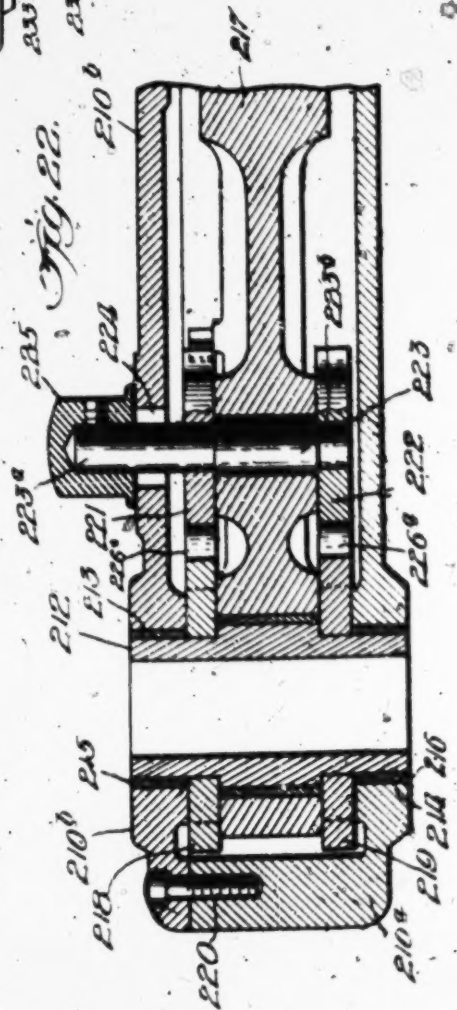
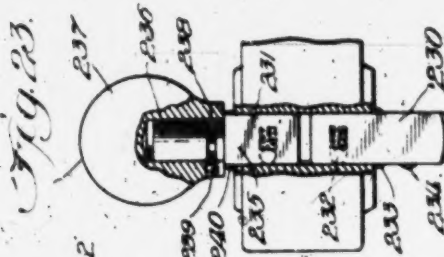
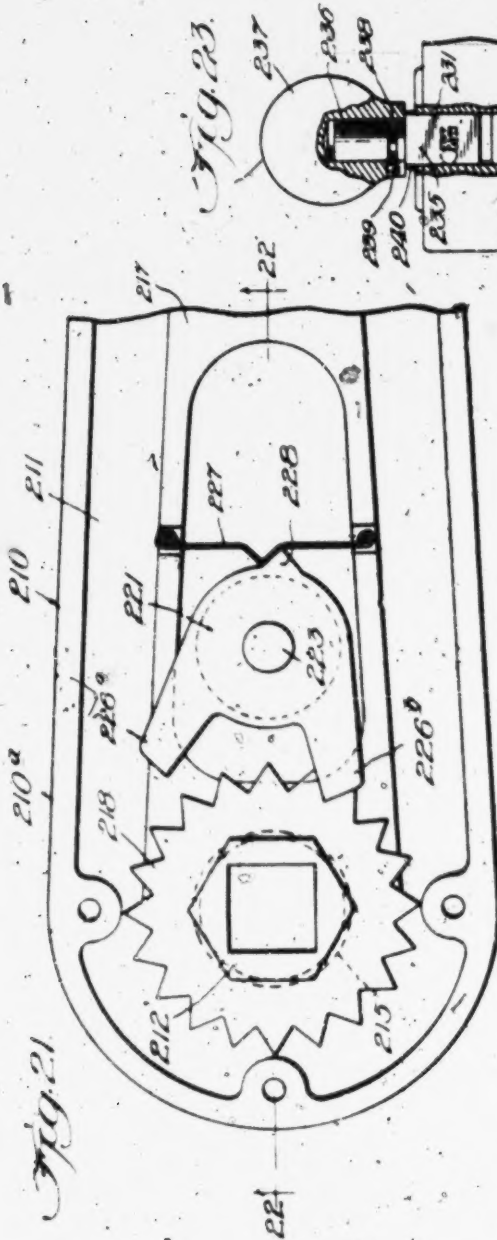
May 19, 1942.

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TORQUE MEASURING WRENCH

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Filed Nov. 22, 1937

6 Sheets-Sheet 6



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UNITED STATES PATENT OFFICE

2,283,888

TORQUE MEASURING WRENCH

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Application November 22, 1937, Serial No. 175,863

35 Claims. (Cl. 265-1)

My invention relates to wrenches and it has to do more particularly with wrenches adapted for measuring the force or torque applied therethrough to nuts, bolts, studs, and other similar pieces of work.

My invention further has to do with a wrench embodying relatively movable members, such members being so arranged that one of them is operatively engaged with the work and relative movement between the members is yieldably opposed by spring means. In wrenches of this character, the force or torque applied through the wrench is determined by measuring the extent of relative movement between the wrench members as permitted by deflection of the opposing spring means.

The manufacture of a wrench of the foregoing kind presents various problems, one of which is inexpensive production of successive wrenches having a predetermined power rating and each of which will measure the force or torque applied to a certain piece of work in the same uniform precision manner. In other words, all wrenches of a certain power rating produced for any particular kind of work should, preferably, measure the force or torque applied in a substantially uniform manner without any appreciable variation in accuracy. I have found that this condition presents a difficult problem.

For example, coil springs have heretofore been employed for the foregoing purposes and, while they well serve their purpose in each individual wrench, they are subject to certain conditions involving the difficulties above mentioned. As is well known, it is customary in the manufacture of coil springs; and particularly those suitable for torque measuring wrenches, to first form or coil the spring from relatively soft wire and to then temper the same to the desired hardness. In this operation, a scale forms on the surface of the metal which cannot be practically removed in the formed coil spring, with the result that in a spring of this character, as it is compressed and expanded from time to time, the scale thereon tends to cause variation in accuracy of the tension of the spring. This variation tendency in different springs is not uniform. These variable conditions existing in different springs necessarily cause variation in the tensioning action of different coil springs even though they are manufactured successively under the same set of specifications. For these reasons, among others, manufacturers of coil springs do not usually guarantee the same to be accurately rated and they usually allow for a

minimum percentage of error as high as 5 per cent. Spring tension variation of this extent requires very careful handling, sorting, testing and adjusting of springs that are to be used in the manufacture of precision devices like torque wrenches.

One of the objects of my invention is to provide an improved torque measuring wrench of the foregoing character which embodies spring means which is not subject to the foregoing objectionable conditions and in which the difficulties mentioned are eliminated.

Another object is to provide an improved wrench of the foregoing character which is simple in construction, is inexpensive to manufacture and to maintain in use, is of rugged and compact construction, and is adapted to measure the force or torque applied therethrough in a precision manner.

A further object is to provide a torque measuring wrench of the foregoing character wherein relative movement between the relatively movable wrench members is yieldably opposed by an elongated leaf-like spring means, which spring means is so constructed and arranged that any number of successive wrenches of the same class and power embodying the same may be manufactured with each wrench adapted to uniformly measure the force or torque applied to any particular piece of work.

An additional object is to provide an improved torque measuring wrench of the foregoing character which includes a leaf spring member formed of a high-grade steel to a predetermined size and shape and free from scale, which spring is of such character that successive similar springs may be made and assembled in the wrench with the assurance that successively made wrenches embodying the same will operate in a substantially identical manner.

Additional objects are to provide a torque measuring wrench of the foregoing character embodying precision spring means free from scale and other physical conditions that might tend to effect its deflection; to provide a torque measuring wrench of the foregoing character having spring means so constructed and arranged as to insure accuracy in the measurement of the force or torque, and which will continue to function in a highly accurate manner over long periods of time; and to provide an improved ratchet type torque measuring wrench embodying the foregoing features.

Other objects and advantages will become ap-

parent as this description progresses and by reference to the drawings wherein—

Figure 1 is a top plan view of one form of wrench embodying my invention, the outer portion of the handle portion thereof not being shown;

Fig. 2 is a vertical, longitudinal sectional view taken substantially on line 4—2 of Fig. 1;

Fig. 3 is a top plan view of the structure shown in Figs. 1 and 2 with the top cover portion thereof removed;

Fig. 4 is an enlarged section taken substantially on line 4—4 of Fig. 2;

Fig. 5 is an enlarged section taken substantially on line 5—5 of Fig. 3;

Fig. 6 is an enlarged side elevational view of the dial structure shown in Figs. 1 and 2;

Fig. 7 is a top plan view of another form of wrench embodying my invention;

Fig. 8 is an enlarged horizontal sectional view of the wrench shown in Fig. 7, which view is taken substantially on line 8—8 of Fig. 9;

Fig. 9 is a longitudinal, vertical sectional view taken substantially on line 9—9 of Fig. 8;

Fig. 10 is a horizontal sectional view taken substantially on line 10—10 of Fig. 9;

Fig. 11 is a fragmental sectional view showing a modified form of means for mounting the spring which opposes relative movement between the wrench members;

Fig. 12 is a view similar to Figs. 3 and 8, except showing a further modified form of wrench embodying my invention;

Fig. 13 is a longitudinal, vertical sectional view taken substantially on line 13—13 of Fig. 12;

Fig. 14 is a vertical, longitudinal sectional view of still another form of wrench embodying my invention;

Fig. 15 is a horizontal sectional view taken substantially on line 15—15 of Fig. 14;

Fig. 16 is a section taken substantially on line 16—16 of Fig. 14;

Fig. 17 is a fragmental sectional view of another form of wrench embodying my invention;

Fig. 18 is a section taken substantially on line 18—18 of Fig. 17;

Fig. 19 is a view similar to Figs. 3, 8 and 12, except showing a further modified form of wrench embodying my invention;

Fig. 20 is a longitudinal, vertical sectional view through the structure shown in Fig. 19;

Fig. 21 is a fragmental view of a ratchet form of wrench embodying my invention;

Fig. 22 is a section taken substantially on line 22—22 of Fig. 21; and

Fig. 23 is an elevational view, partially in section, illustrating means that may be applied to the wrenches shown in Figs. 2 and 31 for engaging the wrench with the work and also for aiding in support of the wrench upon the work during the use thereof.

The wrench shown in Figs. 1 to 6, inclusive, includes a chambered head 30 to which is connected a handle 31. The head 30 includes a body section 32 having a rather deep chamber 33 therein and a top cover section 33 secured to the body section 32 by a plurality of screws or other fastening devices 34.

The forward end of the head 30 rockably supports a work-engaging member 35. More particularly, the body and cover sections are provided with aligned openings 36 and 37 in which are received upper and lower reduced cylindrical hub-like portions 38 and 39 on the annular head 30 of the work-engaging member 35. The work-

engaging member is provided with a central opening 40 of rectangular or other suitable shape to prevent rotation of the supported part, and this opening is adapted to receive any suitable work-engaging adapter (not shown) for operatively connecting the wrench with the work.

The work-engaging member 35 is further and operably connected with the tool head 30 (Figs. 2 and 3) by spring means in such a way that relative rock movement between the head and work-engaging member, when the wrench is engaged with the work and the wrench handle 31 is actuated to tighten or loosen the work, is yieldably opposed; and by measuring the extent of relative rock movement between the head 30 and work-engaging member 35, as permitted by deflection of the spring means, I determine the amount of force or torque applied to the particular piece of work in tightening or loosening the same.

More particularly, the work-engaging member 35 is provided with a rearwardly-extending webbed arms 41 which terminates in a spring attachment head portion 42 (Figs. 2 and 3) having a longitudinally extending and vertically disposed slot 43 therein. The spring means that I employ takes the form of an elongated leaf-like spring member 44 having its forward end received within the arm slot 43 and fixedly secured therein by rivets 45 or other suitable securing devices. It is to be understood that the spring member 44 may be referred to as a strip spring member and that it may take the cross-sectional shape shown or any other suitable cross-sectional shape such as square, circular, oval or the like. The rear end of the spring 44 is connected to the wrench head 30 by a support unit 47 (Figs. 2, 3 and 4) which is automatically adjustable as the spring 44 is deflected to compensate for the changed position of the deflected spring and thereby avoid abnormal distortion of the spring, which, if it should occur, might create a condition causing a false registration of the torque or force being applied to the work.

The support unit 47 is located at the rear end of the wrench head chamber 30 and it is pivotally carried by these sections in such a way as to maintain at all times substantially the same alignment relation between the longitudinal center line of the spring 44 and the axis of the unit 47. Specifically, the unit 47 (Fig. 4) includes a pair of end plate members 48 and 49 each having an outwardly extending cylindrical stud 50 rotatably engaging, respectively, in openings 51 formed in the body and cover sections 32 and 33. The end plates 48, 49 are connected together in spaced relation by post members 52 and 53 around which are disposed roller sleeve members 54 and 55. The post members 52 and 53 are spaced apart to such an extent and the sleeves 54 and 55 are of such diameter as to provide a space 56 between the sleeves 54, 55 in which the rear end of the spring 44 is received.

It will be seen that in the use of the foregoing structure, with the work-engaging member 35 applied to the work and with the operator grasping the handle 31 and moving the same to tighten or loosen the work, the handle 31, the tool head 30, the work-engaging member 35 and the work will tend to move as a single unit. However, when the work offers sufficient resistance to turning movement, as when tightening the same, to overcome the initial tension of the spring 44, such spring will be deflected, permitting relative rock movement between the work-engaging member

35 and the tool head 30. As the work offers added resistance, the deflection of the spring 44 will be increased, during which time the spring 44 becomes slightly bowed. As the spring 44 is deflected and bowed, the spring connecting unit 47 will rotate in its bearings 50 to accommodate the changed angular position of the spring 44 caused by its bowing so that the end portion of the spring 44 engaged with the unit 47 will always assume substantially the same position relative to the axes of the rollers 54, 55 of the unit 47, avoiding any cramping of the deflecting spring that would tend to influence or upset its normal deflecting action.

In further carrying out my invention, I construct the strip spring member 44 in such a way as to insure its operation with a high degree of accuracy at all times. The construction of the spring member is such that, for any particular wrench having a particular rated power, any desired number of springs may be made up and, when applied to wrenches, they will all function with substantially uniform rated accuracy. To this end, I employ a spring member formed of a high-grade steel which is tempered to the desired hardness to provide the desired tension rating. The tempered spring is then ground or otherwise treated to remove all scale therefrom and to give it predetermined dimensional characteristics so that a predetermined pressure will be required to cause an initial deflection of the spring and to cause deflection of predetermined extent. By providing a strip spring member of this character I find that by mounting it in the manner described, the force or torque applied to the work may be measured in a precision manner and that manufacture of wrenches of this character in quantity is facilitated and may be carried out in an inexpensive way without sacrifice in precision requirements. For any particular wrenches of predetermined size and power-rating, parts may be made up in quantity with the assurance that they may be assembled into complete wrenches that will have the desired power rating.

It will be understood that the power rating of any spring 44 may be varied by changing the cross-sectional area thereof and/or by using a spring having a greater or less active length between the work-engaging member and the unit 47. This effect may also be accomplished by varying the length of the work-engaging arm 41; but once these conditions have been established in any wrench having a particular rated power, successive wrenches may be accurately reproduced with each having a substantially uniform power rating.

The relative movement between the head 30 and the work-engaging member 35 is measured, preferably (but not necessarily) in terms of inch-pounds pressure applied, by indicating mechanism which will now be described. Specifically, I employ a detachable indicator unit which includes a cup-shaped casing 57 (Figs. 1 and 2) having its bottom part secured to the cover section 33 by a pair of diametrically opposed screws 58. The openings through which the screws 58 extend take the form of elongated arcuate slots 59 that permit substantial rotation of casing 57, which rotation is tensioned by spring washers 60 disposed between the heads of the screws 58 and the adjacent wall of the casing 57. The casing 57 is provided with an inverted, cup-shaped, transparent cover 61, having a skirt portion 61^a

snugly fitting against the inner part of the side wall of the casing 57. The side wall of the casing 57 is provided with a circumferentially extending slot 62 (Fig. 6) which is covered by the transparent cover side wall 61^a, for a purpose which will be referred to more particularly hereinafter.

The indicator unit further includes an inverted cup-shaped dial drum 63 (Fig. 2), the side wall 63^a of which extends in substantially parallel relation to the side walls of the casing 57 and cover 61. The top of the dial drum 63 is provided with a graduated scale 64 and the side wall of the drum is provided with a corresponding scale 65. The top of the transparent cover 61 has an indicating mark 66 and the skirt 61^a of the transparent cover at the center of casing slot 62 is provided with a corresponding indicating mark 67. With the foregoing construction, the casing 57 and cover 61 may be set as a unit so that the indicating marks 66 and 67 coincide with any desired mark (zero, for example) on the dial scales 64 and 65, respectively; and, by rotating the dial 61 in either direction, the extent of relative movement of head 30 and member 35 and the pressure applied through these members to the work will be indicated by the extent of movement of the dial scales relative to the indicating marks 66 and 67.

The dial drum 63 is carried by a tubular shaft element 68 which extends downwardly through the central boss-like portion of the bottom part of the casing 57 and it fixedly receives a shaft 69 extending into the head chamber 30^a where it receives a pinion 70 which is operatively engaged with a rack member 71 carried by the work-engaging member arm 41.

The rack member 71 is provided with a squared and toothed rack portion 71^a which directly engages the pinion 70, and this rack member is supported for longitudinal adjusting movement to accommodate the arcuate movement of its supporting arm 41 when relative rock movement takes place between the head 30 and work-engaging member 35. Specifically, the rack member is of T-shape and its T-stem portion 71^b is snugly and slidably received in a slideway 72 formed by a recess in a cross plate 73 supported by the upper rear end portion of the work-engaging member arm 41. The rear end of the rack member stem 71^b is engaged by a U-shaped spring 74 carried by the arm 41, which spring is so constructed and arranged as to continuously urge the rack member forwardly into engagement with the pinion 70 but will permit the rack member to be moved backwardly and forwardly to accommodate the arcuate movement of the rack member above mentioned. With this arrangement, as soon as the work offers sufficient resistance to overcome the initial tension of the spring 44, such spring will be deflected and the head member 30 will rock relatively to the work-engaging member 35 and its arm 41, thereby moving the indicating unit 57 and its pinion 70 relative to the rack member 71 and causing the dial drum 63 to rotate. The extent of rotation of the dial drum and the amount of pressure applied to effect such rotation may be accurately determined by noting the extent of movement of the dial scales relative to the indicating marks 66 and 67. At times, the operator, when actuating the wrench, may be in such a position that the dial scale 64 is within his vision while, at other times, the dial scale 65, at the side of the dial drum, may be within his vision. In either event,

he can readily determine the dial scale reading and the amount of pressure applied.

It will be appreciated that there is a safe limit to the extent of deflection of the spring 44. To avoid over-deflection of such spring and, in turn, probable detrimental distortion of the same which might affect accuracy of the wrench, inwardly-extending stop lugs 32^a and 32^b of equal length are provided on opposite side walls of the head chamber 30^a adjacent the rear end of the arm 41. The forward end of the arm 41 will abut against the stops 32^a and 32^b upon a predetermined, relative rotational movement between the head 30 and work-engaging member 35. These lugs 32^a and 32^b are of such length that they stop further relative rotational movement of the parts when the safe deflection limit of the spring is reached or is nearly reached. Of course, the stop lugs 32^a and 32^b may be of any desired length to limit the deflection of the spring 44 to any desired extent.

Wrenches embodying my invention may take various forms, and in Figs. 7 to 10, inclusive, I have shown another form which may well serve my purpose in taking care of certain kinds of work. Specifically, this wrench includes a head 80 having a handle 81 thereon. The head 80 includes a bottom chamber section 82 and a removable top cover section 83 which supports an indicating unit 84. The head sections provide a head chamber 85 in which I rockably mount a work-engaging member 86. The work-engaging member is provided with a stepped stub shaft portion 87 which finds suitable bearing in a thickened forward portion or boss 88 in the bottom section 82, and this shaft is of sufficient length to extend below the boss 88 where it receives a collar 89 secured thereto by lock screws 90, whereby the shaft and the work-engaging element 86 are fixedly secured in place for rock movement. The outward projecting end of the shaft 87 is provided with a shank or other suitable means 91 for direct engagement with the work or for reception of suitable adapter means which may be engaged with the work, as determined by the character of the work to be tightened or loosened.

The work-engaging member is slotted to receive one end of a strip spring member 92 similar to the previously described spring 44 and which spring is secured in place by screw members 93. The spring 92 extends rearwardly within the head chamber 85 and its rear end is operably connected with the head 80 by adjustable abutment means. More particularly, the head 80 near the rear end of the chamber 85 is provided in its sides with aligned threaded openings 94 in which are received abutment members having a threaded shank 95 and a rounded abutment head 96 projecting into the head chamber. The spring 92 extends rearwardly between the abutment members and such members are adjusted inwardly, preferably to similar extents, substantially into engagement with the side faces of the spring 92 so that when the wrench handle 81 is grasped and rotated in either direction the pressure applied will be transmitted through the head 80, the spring 92 and the work-engaging member 86 to the work.

As in the first-described form, when the work offers sufficient resistance to overcome the initial tension of spring 92, relative rock movement takes place between the head 80 and work-engaging member 86, and by measuring the extent of this movement one may determine, through the indicating unit 84, the amount of pressure ap-

plied. The indicating unit 84 may include a hand 97 movable relative to a dial 98 having a scale 99 thereon calibrated to register, preferably (but not necessarily), inch-pounds pressure. The hand 97 is connected through suitable shaft means 100 to a pinion 101 which is operably connected to the work-engaging member 86. More particularly, the work-engaging member 86 is connected to the pinion 101 by an arm 102, the forward end of which is fixedly secured to the work-engaging members by screws or other suitable fastening devices 103. The rear end of the arm 102 is provided with a rack portion 102^a which engages the pinion 101; and, with this arrangement, when the work offers sufficient resistance to cause deflection of the spring 92 and relative movement of the head 80, as when tightening the work, such movement of the head and pinion 101 relative to the rack portion 102^a will cause the gage hand 97 to rotate relative to the dial scale and register the extent of this movement in terms of pressure applied.

The side walls of the bottom section 82 of the head are provided with stop lugs 104 which are adapted to engage the opposite faces of the spring 92 upon a predetermined relative rotational movement between the parts, thereby limiting the extent of deflection of the spring 92 within safe operating limits. This arrangement is substantially the same as the spring stop arrangement of the first-described form, except that the stop members here engage the spring instead of the work-engaging member.

In order to lessen the tendency of the abutment elements 96 to cramp the spring 92, the spring-contacting portions of these abutments are rounded as shown in Fig. 8. However, if desired, rollers 105 may be substituted for the abutment elements 96, as shown in Fig. 11. More particularly, the casing head 106 (Fig. 11) is provided with a chamber 107, similar to the chamber 85, and the rear portion of the wall of this chamber is provided with a pair of vertical and arcuate-shaped roller seats 108 in which the rollers 105 are received. These rollers are of such diameter and the seats 108 are spaced apart to such an extent that the rear end of the strip spring 109 is snugly received therebetween. The roller action between the spring and rollers will tend to minimize the tendency to cramp the spring 109 and abnormally distort the same.

My invention is also adaptable to so-called double-handle wrenches, or wrenches having two oppositely extending handles adapted to be grasped by the hands of a single operator or by different operators. To this end, I may employ a structure similar to that shown in Figs. 12 and 13, which includes a wrench head 110 having aligned handles 111 and 112 extending from the opposite ends thereof.

The wrench head 110 (Figs. 12 and 13) is formed of a chambered bottom section 113 and a top section 114 providing a head chamber 115. Within the chamber 115, and preferably midway between the handles 111, 112, I employ a work-engaging member 116 similar in construction and mounting to the work-engaging member 86 of the second-described form. The work-engaging member 116 is provided with a cross slot in which is secured a strip spring 117. The spring 117 is of sufficient length to extend substantially throughout the length of the head chamber 115 and its mid-portion is secured in the work-engaging member slot by suitable rivets or other fastening devices 118. In this way, strip springs

Arms or elements 117^a and 117^b, of substantially equal length, extend in opposite directions from the work-engaging member 110. If desired, the strip spring arms may take the form of separate spring members having their adjacent ends rigidly carried by the work-engaging member 110.

The free ends of the spring arms 117^a and 117^b are operably connected with the head 110 by rounded abutment elements 119 and 120 disposed on the opposite side walls of the head so that when the handles 111 and 112 are grasped and rotated in clockwise direction (as viewed in Fig. 12), as in tightening the work, both spring arms 117^a and 117^b will be effective to yieldably oppose relative rotation between the head 110 and work-engaging member 110.

In the use of this structure, as with the previously described structures, when the work offers sufficient resistance to overcome the initial tension of the spring arms 117^a and 117^b, head 110 will rotate clockwise relative to the work-engaging member and, by measuring the extent of this movement, one may determine the amount of pressure applied. This measurement may be accomplished by an indicating unit 121 similar to the indicating unit of the first-described form, except that a stationary dial 122 and a rotatable hand 123 are employed instead of the drum dial structure 83.

The rotatable hand 123 (Fig. 13) which corresponds to the hand 87 (Fig. 7) is carried by a rotatable shaft 124 which extends into the head chamber 115 where it receives a pinion 124. The pinion 124 meshes with a larger gear 125 supported by a shaft 126, the opposite ends of which are journaled in the cover section 114 and in a cross-supporting bracket 127 secured to the under side of the section 114 by screws 128. The shaft 126 carries another small gear 129 which meshes with a larger gear 130 having a hub portion 131 detachably secured to the upper portion of the work-engaging member by a pair of spaced pins 132 (only one shown in Fig. 13). With this arrangement, as relative rotational movement takes place between the head 110 and the work-engaging member 110, the movement of the gear 129 relative to the gear 130 transmits motion to the hand 123 through the gears 125 and 124. The dial 122 is provided with a scale (not shown) similar to the scale 89 (Fig. 7) calibrated, preferably, in terms of inch-pounds pressure, and by reading the extent of movement of the hand 123 relative to the dial scale, the operator may determine the amount of pressure applied.

The wrench structure shown in Fig. 12 is adapted particularly for measuring the pressure applied in tightening the work. To adapt the wrench for operation as a substantially rigid structure when loosening the work, I provide adjustable abutment screws 133 and 134 in the opposite side walls of the bottom head section 113, which screws are opposed to the abutment elements 119 and 120. The screws 133 and 134 may be adjusted into light engagement with the spring arms 117^a and 117^b, respectively, or they may be slightly spaced therefrom, as desired. In either event, they are locked in the desired position by the lock screws 135 and 136. The screws 133 and 134 may serve, when adjusted into contact with the spring arms 117^a, 117^b, as initial tension adjustment means. It will be seen that by setting up these screws against the spring arms to any desired extent, the initial tension of the spring arms may be increased so that a greater initial pressure will be required to

deflect the same. This feature may serve for compensating purposes, as, for example, slight wear of the parts may take place over a long period of use and the gage mechanism may for this reason fail to register accurately. By setting up the screws 133 and 134, any out-of-register condition, and particularly an initial register condition, may be corrected. So far as the loosening action is concerned, it will be seen that when the wrench handles are moved in a counterclockwise direction, the head 110 and screws 133, 134 contact the spring arms 117^a, 117^b in close proximity to the work-engaging member 110 so that the loosening pressure may be applied through a substantially rigid series of connections. It will be understood that, so far as the foregoing tensioning feature is concerned, it may well be applied to any of the wrench forms disclosed herein.

In certain instances it may be desirable to employ wrenches having long handles, and where the work acted upon is at a considerable distance away from the operator so that he cannot readily observe the indicating mechanism when it is located as shown in the previous forms. To take care of this condition, in the use of my invention, I may employ the structure shown in Figs. 14 to 16, inclusive. This structure includes a head 140 and an elongated hollow handle 141. The head 140, the work-engaging member 142 and strip spring 143 of this form are substantially identical with the form of Fig. 8 and it will not, therefore, be necessary to describe these parts and their mountings in detail.

Relative rock movement between the head 140 and work-engaging member 142 is measured by an indicating unit 144 which is substantially the same as the indicating units of the forms of Figs. 8 and 13, except that this unit is located remotely from the work-engaging member 142 and in close proximity to a handle portion 145 that may be grasped by the operator. The unit 144 is provided with a tubular body portion 146 which receives the rear end of the forward handle portion 141 and the forward end of the rear handle portion 145, thereby coupling these handle portions together as a unit.

Relative rock movement of the parts is transmitted to the indicating unit 144 by transmission mechanism which will now be described. This transmission mechanism includes a flat arm 147 mounted within the head 140 and a shaft 148 connected to an indicator pinion 149 by a gear 150. The forward end of the arm 147 is fixedly secured to the work-engaging member 142 by screws or other suitable fastening devices 151. This arm extends rearwardly slightly past the rear end of the spring 143 and it is provided with a longitudinally extending elongated slot 152 in which is received an upstanding arm 153 on a head member 154 secured to the forwardly extending end of the shaft 148. The shaft is rotatably supported by suitable bearing members 156 mounted within the hollow handle portion 141.

In the use of this structure, as relative rock movement between the parts takes place, as for example when tightening the work, the movement of the head 140 and handle portions 141 and 145 causes a counterclockwise movement of the shaft 148 (as viewed from the front end of the wrench), in turn rotating the gears 150 and 149 so as to move the gage hand 157 in a clockwise direction. When the wrench is released and the parts are returned to normal position, the

reverse movement of the parts takes place. Backlash in both of these movements is guarded against by a clock-type spring 158 (Fig. 16) having one end secured by a screw 159 to the bottom section of the wrench head, the same extending spirally around the shaft head 154 and being connected to such head as at 160. This spring tensions the movement of the shaft in such a way as to cause it to move with a smooth action, thereby insuring a more positive and accurate indication by the indicating unit.

In certain instances, I may employ a pair of separate, independently acting strip spring members for measuring the pressure applied in both tightening and loosening the work. Such an arrangement is shown in Figs. 17 and 18. Referring particularly to Fig. 17, the structure shown is similar to that of Figs. 1 and 2 except that the rear end of the work-engaging member arm 170 is shaped to provide a reduced tongue to which the forwardly extending ends of similar strip spring members 171 and 172 are secured in oppositely facing relation by rivets or other suitable fastening devices 173. The rear end portion of the head chamber 174 is provided with an upright post member 175 around which is disposed a sleeve unit 176 that provides a roller abutment mounting for the rear ends of the spring members 171 and 172. That is to say, the spring members 171 and 172 are long enough to extend rearwardly slightly past the roller unit 176, and they are spaced apart to such an extent that their adjacent faces snugly engage the roller unit 176. With this arrangement, as the work is tightened and the head 177 rotates relatively to the work-engaging arm 170, the spring member 172 is operative to yieldingly oppose this movement. When the work is loosened, the other spring member 171 becomes operative in opposing relative movement of the parts. Relative movement of the parts may be measured by any suitable indicating mechanism, such, for example, as any of those previously described. The indicating structure may include a rack member 178 engaged with a pinion 179 adapted to be carried by an indicating unit connected to an indicator of any suitable kind as, for example, the drum dial 83 of Fig. 2 or the gage hand 87 of Fig. 7.

My invention is also well adapted to an arrangement wherein the wrench head portion is adapted to be non-rotatably secured to the work, and the handle part which the operator grasps is, on the other hand, rotatable relative to the work. In Figs. 19 and 20 I show a wrench of this character which includes a chambered head 180 having, on the lower side of its forward end, a thickened boss portion 181 to the bottom of which is detachably secured, by screws or other fastening devices 182, a work-engaging adapter member 183. Within the chamber 184 of the head I rotatably or rockably mount a handle member 185. More particularly, the forward end of the handle 185 is detachably secured, by screws or the like 186, to a supporting member 187 having a depending stub shaft portion 188 rotatably mounted in an annular opening 189 formed in the inner wall of the thickened boss 181. An anti-friction bearing member 190 is associated with the stub shaft 188 for a purpose which will be obvious.

The handle 185 extends throughout the head chamber 184 and projects rearwardly therebeyond through an elongated slot 191 formed in the rear end of the head 180. The outwardly projecting end of the handle is provided with a

grip portion 192 which facilitates use of the structure.

Relative rotation or rock movement between the head 180 and handle 185 is yieldingly opposed by a strip spring member 193 carried by the head 180. To this end, spring supporting block members 194 and 195 are mounted within and adjacent the opposite ends of the head chamber 184 and they are provided with facing slots 196 and 197 in which the opposite ends of the strip spring member 193 are freely received. The opposite side walls of the slots are provided with abutment elements 198 which have substantially point-contact engagement with the adjacent surfaces of the strip spring 193, thereby minimizing frictional contact between these parts. The handle 185 is disposed above the spring 193 and it is provided, adjacent the mid portion of the spring 193, with laterally-spaced depending pins 199 which are adapted to engage the spring 193 on the opposite sides thereof. In this way the tendency of the handle 185 to rotate relatively to the head is yieldingly opposed by the spring 193 but, when the work offers sufficient resistance to overcome the initial tension of such spring, the spring will be deflected and deflection will take place to an extent dependent upon the amount of pressure applied.

By measuring the extent of this deflection, I determine the amount of pressure, preferably inch-pounds, applied through the handle and spring to the work. The mechanism for measuring this deflection may take the form of indicating mechanism like that shown in Fig. 3, including a pinion 200 supported by a head-carried gage device 201 and a yieldable, shiftable rack member 202 carried by the handle 185. Other than above stated, the operation of this form of wrench is substantially the same as the forms previously described.

In taking care of various kinds of work, it is desirable to employ a ratchet form of wrench structure. My invention is well adapted to a wrench of that character, by so constructing the ratchet mechanism that wear thereof is minimized and any distortion thereof which would cause inaccurate reading of the gage structure is avoided. In Figs. 21 and 22, I have shown one form of torque measuring ratchet wrench in which the foregoing objectionable conditions are avoided, and which is adapted to operate with a ratchet action while, at the same time, measuring the force or torque applied in a highly efficient and accurate manner. More particularly, referring to Figs. 21 and 22, I employ a head part 210 which may be similar to the heads of the wrenches shown in Figs. 1 to 18, inclusive, and which is provided at its rear with a handle (not shown) adapted to be grasped by the operator. Within the wrench head chamber 211 I rotatably mount a work-engaging member 212 with which is associated ratchet mechanism. More particularly, the body and cover portions 210^a and 210^b of the wrench body, at the forward end thereof, are provided with aligned openings 213, 214 in which the opposite reduced end portions of the work-engaging member 212 are rotatably received. For friction-reducing purposes, the opposite ends of the work-engaging member 212 are engaged with the body by anti-friction bearing members 215 and 216. Upon the central and enlarged portion of the work-engaging member 212 I rotatably mount an arm 217 which may be constructed similarly to the arm shown in Figs. 2 and 3. The rear

end of this arm is connected with a strip spring member (not shown) which is, in turn, connected with the body 210 in any of the ways shown in Figs. 1 to 18, inclusive, so that relative rotational or rock movement between the body 210 and the arm 217 is yieldingly opposed by said spring member.

The arm 217 is operably connected to the work-engaging member 212 by a ratchet mechanism which will now be described.

Similar ratchet wheels 218 and 219 are mounted upon the reduced end portions of the work-engaging member at the opposite ends of the enlarged central portion of such member. The ratchet wheels each have a polygonally shaped central opening and the portion of the work-engaging member engaged thereby may be complementally shaped so that the ratchet wheels are non-rotatably fixed upon the work-engaging member 212. The arrangement of these parts is such that when the body cover, the work-engaging member, arm 217 and ratchet wheels are assembled in the manner shown in Fig. 22 and they are secured in that position by one or more cover screws 220, the parts are operatively assembled so that the ratchet wheels rotate with the work-engaging member.

The ratchet mechanism further includes a pair of double pawl members 221, 222 carried by the arm 217, which serve to operatively connect such arm with the work-engaging member. More particularly, a shaft 223 is rotatably mounted in the arm 217 and has reduced end portions 223^a and 223^b projecting above and below such arm. Upon the reduced end portions 223^a and 223^b of the shaft 223, and in guide-abutment engagement with the upper and lower sides of the arm 217, I fixedly secure the pawl members 221 and 222. The end 223^a of the shaft 223 extends upwardly and through an elongated opening 224 in the head cover 210^b where it receives a finger-piece 225 which may be grasped and actuated to properly set the pawl members 221 and 222, as will be mentioned more particularly hereinafter.

Each pawl member 221, 222 has a pair of similar pawl elements 226^a and 226^b which project forwardly so that in certain adjusted positions thereof they will, respectively, engage the teeth of the ratchet wheels 218 and 219. The pawl members 221, 222 are moved simultaneously to similar extents by adjustment of the shaft 223 and when these members are rotated to the position shown in Fig. 1, the pawl element 226^b is thrown into engagement with the ratchet wheels. The pawl members are held in the position shown by the upper and lower laterally directed leaf spring members 227 which have V-shaped mid portions that are engaged by similarly-shaped projections 228 on the adjacent peripheral surfaces of the pawl members. Such spring members yieldably hold the pawl members in the position, for example, shown in Fig. 21; however, if it is desired to reverse the pawl action so that the pawl elements 226^a are operatively engaged with the ratchet wheels, it is only necessary to grasp the finger-piece 225 and rotate the same in counterclockwise direction (as viewed in Fig. 21) to snap the pawl member projections 228 on the side of the V-shaped spring portions opposite that shown in Fig. 21.

In the use of the ratchet structure shown, with the pawl element 226^b engaged with the ratchet wheel, the arm 217 and work-engaging

member 212 are operatively connected as a rigid unit when the wrench is moved in a clockwise direction (as viewed in Fig. 21) to tighten the work. When the wrench is moved in the opposite direction, with the parts so set, the ratchet wheels 218 and 219 will remain stationary and the pawl elements 226^b, through the yielding connection afforded by the springs 227, will slip in counterclockwise direction over the teeth of the ratchet wheels. In this way, an ordinary ratchet action is accomplished in tightening or moving the work in a clockwise direction. The same operation takes place when the ratchet members 221, 222 are adjusted, as above stated, to operatively engage the pawl elements 226^a for operative action in the reverse direction. Other than above mentioned, the construction and operation of this form of wrench may be similar to any of the forms shown in Figs. 1 to 18, inclusive.

The wrench as shown in Figs. 2 and 22 may be connected to the work through a work-adaptor member such as the member 230 shown in Fig. 23. To this end, the work-engaging member 231 is provided with a rectangular, or other non-circular opening, and the upper or inner end of the work-adaptor member 230 is similarly shaped. This part of the member 230 may be provided with a spring and ball friction attachment 232 to prevent the adaptor member from accidentally becoming detached. Such adaptor may also be provided with stop lips or lugs 233 for preventing the adaptor from being inserted too far within the work-engaging member opening. The lower projecting portion of the work-adaptor member 230 may also be provided with a spring and ball attachment connection 234 so that a socket or other work-engaging element may be firmly held in place thereon.

At times, the operator may wish to rest his hand upon the forward part of the wrench to steady his movements in tightening the work. In that case, I may employ the hand-supporting structure shown in Fig. 23. Specifically, the upper end of the work-engaging member opening receives a hand supporting unit having a shank portion 235 constructed similarly to the upper or inward end of the work-adaptor member 230. The shank portion 235 projects outwardly above the wrench structure as at 236 and is, preferably, of cylindrical shape for rotatable reception of the ball-like hand-grip member 237. The cylindrical extension 236, inwardly from the end thereof, is provided with a groove 238 for the reception of a stud 239 carried by the grip member 237, whereby the grip member is rotatably fixed against outward displacement upon the cylindrical extension 236. The extent of insertion of the shank 235 within the work-engaging member opening is limited by stop lugs or the like 240 similar to the stop lugs 233.

I believe that the operation and advantages of my invention as above first stated will be readily understood from the foregoing description. It is to be further understood that while I have shown and described several forms of wrenches embodying my invention, other changes in details and arrangements of parts may be resorted to without departing from the spirit and scope of my invention as defined by the claims that follow. For example, in a two-spring construction like that shown in Figs. 17 and 18, the springs may be fixedly carried in laterally spaced relation by the wrench head and their free ends may frictionally and freely engage the opposite sides of the end

of an arm corresponding to the arm 170 (Fig. 17). Also, this same arrangement may be employed where a single strip spring member is used; in which case, the rear end of the strip spring member would be fixedly carried by the wrench head and its other or forward end would be freely and frictionally engaged with the rear end of the work-engaging member arm. In other words, the connections of the spring 44 shown in Figs. 2 and 3 may be reversed so that the spring is fixedly connected at one end to the head instead of to the work-engaging member arm.

I claim:

1. A torque measuring wrench comprising a head member having a chamber therein, a work-engaging member rockably mounted in said chamber and having an exposed part adapted for engagement with the work, a normally straight and stiff strip spring member mounted in said chamber and having one end connected to said work-engaging member, means mounted in said chamber having slidable engagement with opposite side portions of said spring member and connecting the other end of said spring member with said head member so that right and left hand threaded work may be tightened, pressure indicating means, and means between said indicating means and said work-engaging member for actuating the former as said head and work-engaging members rock relatively.

2. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said spring member to said work-engaging member, a support for the other end of said spring member having a swivel connection with said head member to accommodate flexing action and reciprocation of said spring member as said head and work-engaging members are rocked relatively, and means for indicating the pressure applied to the work through said members.

3. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for rigidly connecting one end of said spring member to said work-engaging member, a roller support for the other end of said spring member having a swivel connection with said head member to accommodate flexing action of said spring member as said head and work-engaging members are rocked relatively, and means for indicating the pressure applied to the work through said members.

4. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said strip member to said work-engaging member, and abutment connection means between the other end of said spring member and said head member, including a pair of rollers between which said other end of said spring member is received, means supporting said roller members as a unit and for rotatively connecting such unit to said head member.

5. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said spring member to said work-engaging member, a pivotal support for the other end of said spring member carried by said head member, said support confining said end of said spring member against

lateral displacement, and means for indicating pressure applied to the work by registering the extent of relative rock movement of said head and work-engaging members.

6. A torque measuring wrench comprising a head member, a work-engaging member rockably supported thereby, a strip spring member, means for connecting one end of said spring member to said work-engaging member, an abutment roller support for the other end of said spring member, comprising a pair of spaced roller members carried by said head member and between which the adjacent end of said spring member is freely received, and means for indicating pressure applied to the work by registering extent of relative rock movement of said head and work-engaging members.

7. A torque measuring wrench comprising a head member having a chamber therein, a work-engaging member rockably mounted in one end of said chamber and having an arm extending rearwardly toward the other end of said chamber, the rock axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar rigidly connected at one end to and extending lineally from the rear end of said arm and connected at its other end to said head member to yieldably oppose relative rock movement between said head and work-engaging member, and indicating means associated with said arm and head member and operated by said arm for registering the extent of relative rock movement between said head and work-engaging members.

8. A torque measuring wrench comprising a head member, a work-engaging member rockably connected thereto, a long normally straight spring bar connected at one end to said work-engaging member, means engaging opposite sides of said spring bar and connecting its other end to said head member, whereby said spring bar yieldably opposes relative rock movement of said members in opposite directions, stop means for limiting the extent of relative rock movement between said head and work-engaging members and also the extent of deflection of said spring bar, and indicating means for registering the extent of said relative rock movement.

9. A wrench for applying torque in opposite directions comprising a head member, a work-engaging member rockably connected thereto, a long and normally straight spring bar, means rigidly connecting one end of said spring bar to one of said members, adjustable abutment means carried by the other of said members and engaging opposite side portions of said spring bar and operatively connecting said spring bar with said other member, and indicating means for registering the extent of relative rock movement between said head and work-engaging members in either direction.

10. A torque measuring wrench comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a strip spring member carried by said head member in such a manner that its mid portion is free to flex, and means operably connecting said handle member to said midportion so that said spring member yieldably opposes relative rock movement between said head and handle members.

11. A torque measuring wrench comprising a hollow head member having an elongated slot in its rear wall and also having provision for operably engaging it with the work, a handle

member projecting through said slot into said head member, means in said head member whereby said handle member is rockably connected to said head member, a strip spring member carried within said head member in such a manner that its midportion is free to flex, means within said head member operably connecting said handle member to said midportion so that said spring member yieldably opposes relative rock movement between said head and handle members, and means indicating extent of relative rock movement of said head and handle members.

12. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a grip portion adjacent one end thereof, a work-engaging member pivotally connected with the other end of said handle member, said work engaging member having means through which it may be connected with the work, which means is located substantially on the pivotal axis of said work-engaging member, and a normally straight spring bar carried by said work-engaging member, and extending away from and in substantially radial alignment with the said work-engaging member, said spring bar being positioned between the axis of said pivot and said grip portion, said handle member having means engaging said spring bar at a predetermined distance from the axis of rotation of said work-engaging means and at a point between said work-engaging means and said grip portion to provide a substantially constant moment arm, whereby when a rotary force is applied to said grip member the same will be transmitted through said handle member to said spring bar and through said spring bar to said work-engaging member.

13. A torque measuring wrench adapted for use with means for indicating the force applied to the work, which comprises a handle member having a grip portion on one end thereof, a work-engaging member having an element thereon which is adapted to be connected to the work, said work-engaging member having a portion pivotally connected to the other end of said handle member, substantially on the axis of said work-engaging element, a spring bar supported by one of said members in end to end alignment with said pivotally connected portion and said grip portion, which said spring bar is held against longitudinal displacement relative to said one member, a connection between the other of said members and said spring bar, said connection permitting slight longitudinal displacement of said spring bar, whereby relative rotation between said members causes deflection of said spring bar and there is provided a constant moment arm through which force is applied from said grip portion through said handle member, thence through said spring bar, and finally through said work-engaging member to the work.

14. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a longitudinally extending grip portion adjacent one end thereof, a work engaging member pivotally supported adjacent the other end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar disposed in radially aligned end to end relation to said grip portion and said work engaging

member, said spring bar having one end connected to said work engaging member with its other end slidably connected with said handle member at a point radially inwardly of said grip portion, whereby there is provided a constant moment arm and pressure applied to said grip portion is transmitted to the work through said handle member, thence forwardly through said spring bar and finally through said work engaging member.

15. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member having a longitudinally extending grip portion adjacent one end thereof, a work engaging member pivotally supported adjacent the other end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, a normally straight spring bar disposed in radially aligned end to end relation to said grip portion and said work engaging member, said spring bar having one end thereof fixably connected to one of said members and its other end engaged with the other of said members, whereby there is provided a constant moment arm and pressure applied to said grip portion is transmitted to the work through said handle member, thence forwardly through said spring bar and finally through said work engaging member.

16. A torque measuring wrench which comprises a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, an arm on said work-engaging member and extending longitudinally of said handle member, a spring bar having one end carried by said arm and extending longitudinally along said handle member, said arm and spring bar constituting a continuous moment arm of substantially constant length, means for connecting the other end of said spring bar with said handle member, means for registering deflection of said spring bar to indicate force applied to the work including relatively movable elements, and means carried by said moment arm and adapted to cooperate with one of said relatively movable elements of said indicating means to operate the latter.

17. A torque measuring wrench which comprises, a handle member having a grip portion, a work-engaging member pivotally supported adjacent one end of said handle, the pivotal axis of said work-engaging member coinciding with the axis of rotation of the work, an arm member on said work-engaging member and extending longitudinally of said handle member, a spring bar extending from said arm longitudinally of said handle member and having one end connected to said arm and its other end engaged with said handle member, said arm and said spring bar providing a continuous constant moment arm of substantially constant length, whereby pressure applied to said grip portion is transmitted to the work through said handle member, thence through said spring bar and finally through said work-engaging member, and means for indicating the amount of pressure applied to the work by measuring the extent of relative rock movement between said handle member and said arm, said means comprising an operating part extending from said pressure indicating means and a second part on the work-engaging member co-

operable with the first part to actuate said indicating means.

18. A torque measuring wrench comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end of said spring bar to one of said members, means on the other of said members pivotally supporting the other end of said spring bar and confining it against lateral displacement, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

19. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging the work, a handle member rockably connected to said head member, a spring bar carried by one of said members and so mounted that its end portions are retained against lateral displacement and its mid portion is free to flex, and means operably connecting the other of said members to said mid portion so that the spring member yieldably opposes relative rock movement between said head and handle members.

20. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a spring bar supported wholly by one of said members, and abutment means carried by the other of said members and adapted to engage said spring bar intermediate its ends so that pressure applied to said spring bar by one member is transmitted through said spring bar to the work-engaging member and the work.

21. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having provision for operably engaging it with the work, a handle member rockably connected to said head member, a spring bar carried wholly by said head member and having its opposite ends retained against lateral movement with its mid portion free to flex, and means for operably connecting said handle member to said mid portion so that said spring bar yieldably opposes relative rock movement between said head and handle members.

22. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-engaging member, and a pair of oppositely extending bearing members on said supporting members and extending at substantially right angles to said bar-receiving opening, said bearing members being rotatably received in said head member openings.

23. A torque measuring wrench comprising a head member including a grip portion, a work-engaging member rockably connected thereto, an elongated normally straight spring bar having its active flexing part disposed wholly between said rockable connection and said grip portion, means rigidly connecting one end of said spring bar to said work-engaging member, means providing a longitudinally slidable connection between said spring bar and said head member, said connection confining said spring bar against movement in either direction relative to said head member and in a plane at right angles to the rock axis of said rockably connected members so that said work-engaging member can be utilized to tighten left or right hand threaded work pieces, and means indicating the amount of pressure applied to the work by measuring the extent of relative rock movement between said head and work-engaging members.

24. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid arm on said work-engaging member and having a longitudinal opening of predetermined cross-sectional size and length extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar of substantially uniform cross section throughout its length having one end securely mounted in and extending substantially to the rear end of said arm opening, a second connection between the other end of said spring bar and said head member, and means for connecting said work-engaging member with a pressure indicating mechanism responsive to relative movement of said head and work-engaging members.

25. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid arm integrally extending from said work-engaging member and having an opening of predetermined cross-sectional size and length, in its outer end and extending toward the axis of rotation of said work-engaging member on a line passing through said axis at substantially right angles thereto, an elongated straight spring bar of substantially uniform cross section throughout having one end extending into said arm opening substantially the full length of the latter, a connection between the other end of said spring bar and said head member, whereby said spring bar yieldably opposes relative movement between said members, and pressure indicating mechanism for measuring the extent of relative movement between said members in terms of pressure applied to the work.

26. A torque measuring wrench comprising an elongated head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end thereof in said top and bottom walls and an intermediate opening in said top wall, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, indicating mechanism

having a part fitting in said intermediate opening, operating means carried by said part and extending into said head member, and means carried by said work-engaging member and adapted to be operably engaged with said operating means merely by axial insertion of said mechanism part in said intermediate opening.

27. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted in said head member and having a part exteriorly accessible for connection with the work, a rigid element on said work-engaging member and having a longitudinal opening of predetermined cross-sectional size and length extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar of substantially uniform cross section throughout its length having one end securely mounted in and extending substantially to the rear end of said element opening, a second connection between the other end of said spring bar and said head member, and means for connecting said work-engaging member with a pressure indicating mechanism responsive to relative movement of said head and work-engaging members.

28. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with an opening, said opening extending in a direction transverse to the axis of rotation of said work-engaging member and lying across said axis, an elongated flexible spring bar having one end thereof securely mounted in said opening and having its opposite end connected to said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicating means operable by said work-engaging member as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

29. A torque wrench comprising a body member, a head member rotatably carried by said body member, a torque resisting beam carried at one end by one of said members, means providing a pivotal connection between the other end of said beam and the other of said members, indicating means, and means for connecting one end portion of said beam with said indicating means.

30. A torque measuring wrench adapted to tighten work having right or left hand threads comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end of said spring bar to one of said members, means on the other of said members slidably receiving the other end of said spring bar and confining it against lateral displacement in opposite directions, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

31. A wrench adapted to tighten work having right or left hand threads comprising, a head member, a work-engaging member rockably supported thereby, a spring bar, means fixably connecting one end portion of said spring bar to one of said members, abutment means on the other of said members engaging the other end portion of said spring bar and confining it against lateral displacement in opposite directions while permitting free relative longitudinal movement

thereof, and means for indicating the force applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

32. A torque measuring wrench comprising, a handle member, a work-engaging member rockably supported thereby, an arm extending substantially radially from said work-engaging member, a spring bar, means fixably connecting one end of said spring bar to said arm, means on said handle member pivotally supporting the other end of said spring bar and confining it against lateral displacement, and means for indicating the pressure applied to the work by registering the extent of relative rock movement of said head and said work-engaging members.

33. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said work-engaging member and extending across the axis of rotation of said work-engaging member and having its opposite end arranged to have a force applied thereto through said handle member, and means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work.

34. A torque measuring wrench comprising, a handle member, a work-engaging member pivotally supported adjacent one end of said handle member, a normally straight spring bar yieldably opposing relative rock movement of said work-engaging member and said handle member, said spring bar having one end thereof fixedly mounted in said work-engaging member and extending across the axis of rotation of said work-engaging member and having its opposite end pivotally connected with said handle member, and means responsive to flexing of said spring bar and consequent relative rock movement of said work-engaging and handle members for indicating the force applied to the work.

35. A torque measuring wrench comprising, a handle member having a grip portion on one end thereof, a work-engaging member rockably supported by the other end of said handle member, a rigid work-engaging element rigidly connected to said work-engaging member to maintain a constant relationship between the axis of rotation of the work and the axis of rotation of said handle member relative to said work-engaging member, a normally straight spring bar member rigidly connected at one end to said work-engaging member and extending toward said grip portion so that its entire active flexing portion is disposed wholly between the axis of rotation of said work-engaging member and said grip portion in general longitudinal alignment with said work-engaging member and said grip portion, means operably connecting the other end of said spring bar member to said handle member so that pressure is applied to the work directly through said handle member, spring bar member, work-engaging member and work-engaging element in the order named, whereby the leverage between the work and said spring bar member is maintained constant, indicating means carried by one of said members and including relatively movable elements, and means for connecting one of said relatively movable elements

of said indicating means to one of the other of said members whereby it is actuated to indicate pressure applied to said handle member and, in turn, the work through said grip portion without exerting through said indicating means the pressure applied to the work, the arrangement being such that said indicating means indicates pressure applied at all points within the flexing range of said spring bar member.

36. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises a handle member having a grip portion, a work-engaging member having a portion pivotally supported adjacent one end of said handle, means coaxial with the axis of said pivotally supported portion by which said work-engaging member may be connected with the work, an arm member on said work-engaging member and extending longitudinally of said handle member, a normally straight, stiff spring bar extending from said arm longitudinally of said handle member in substantially radial relation to the axis of rotation of the pivoted portion of said work-engaging member and having one end connected to said arm and its other end engaged with said handle member at a predetermined distance from the axis of rotation of the pivoted portion of said work-engaging member and at a point between said grip portion and said axis, said arm and said spring bar providing a continuous constant moment arm of substantially constant length, whereby pressure applied to said grip portion is transmitted to the work through said handle member, thence through the spring bar and finally through said pivoted portion of said work-engaging member.

37. A torque measuring wrench adapted for use with means for indicating the force applied to the work which comprises, a handle member extending substantially throughout the length of the wrench and having a grip portion adjacent one end thereof, a work-engaging member having a portion pivotally supported adjacent the other end of said handle member and another portion located on the axis of the first portion and adapted for connection of the work-engaging member with the work, a normally straight spring bar disposed in end to end relation to said grip portion and the pivoted portion of said work-engaging member with its longitudinal axis extending substantially radially relative to the axis of the pivoted portion of said work-engaging member, said spring bar having one

end fixedly mounted in said work-engaging member substantially at the pivotal axis thereof with its other end in slidable engagement with said handle member at a point between said axis of the pivoted portion of said work-engaging member and said grip portion and at a predetermined and substantially constant distance from the axis of the pivoted portion of said work-engaging member, whereby pressure applied to said grip portion is transmitted directly through said handle member, thence forwardly through said spring bar from one end thereof to the other, thence to the pivoted portion of said work-engaging member and to the work, through a constant moment arm effective to rotate the work notwithstanding the position at which pressure is applied to said grip portion.

38. A torque wrench comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length of the body member and a longitudinally extending grip portion carried by said body member; an indicator carried by said handle member, said indicator being located at a point between the ends of said chamber; a work-engaging member having an enlarged portion in said chamber and a relatively smaller portion extending from said enlarged portion to the exterior of said chamber and adapted to be operatively connected with the work; means connecting said enlarged portion of said work-engaging member to said handle member, whereby force applied to said handle member is transmitted to said work-engaging member through said connecting means, the enlarged portion of said work-engaging member being arranged so that it can turn relative to said handle member in proportion to the force applied to the work; an elongated arm means in said chamber, one end of said elongated arm means being fixedly secured to the enlarged portion of said work-engaging member and extending radially from said enlarged portion and lengthwise of said chamber toward said grip portion, the opposite end of said elongated arm means being free to move upon turning of said enlarged portion of said work-engaging member relative to said handle member, and means operatively connecting said free end of said elongated arm means to said indicator to actuate said indicator upon movement of said free end of said elongated arm means.

HERMAN W. ZIMMERMAN

Nov. 3, 1942.

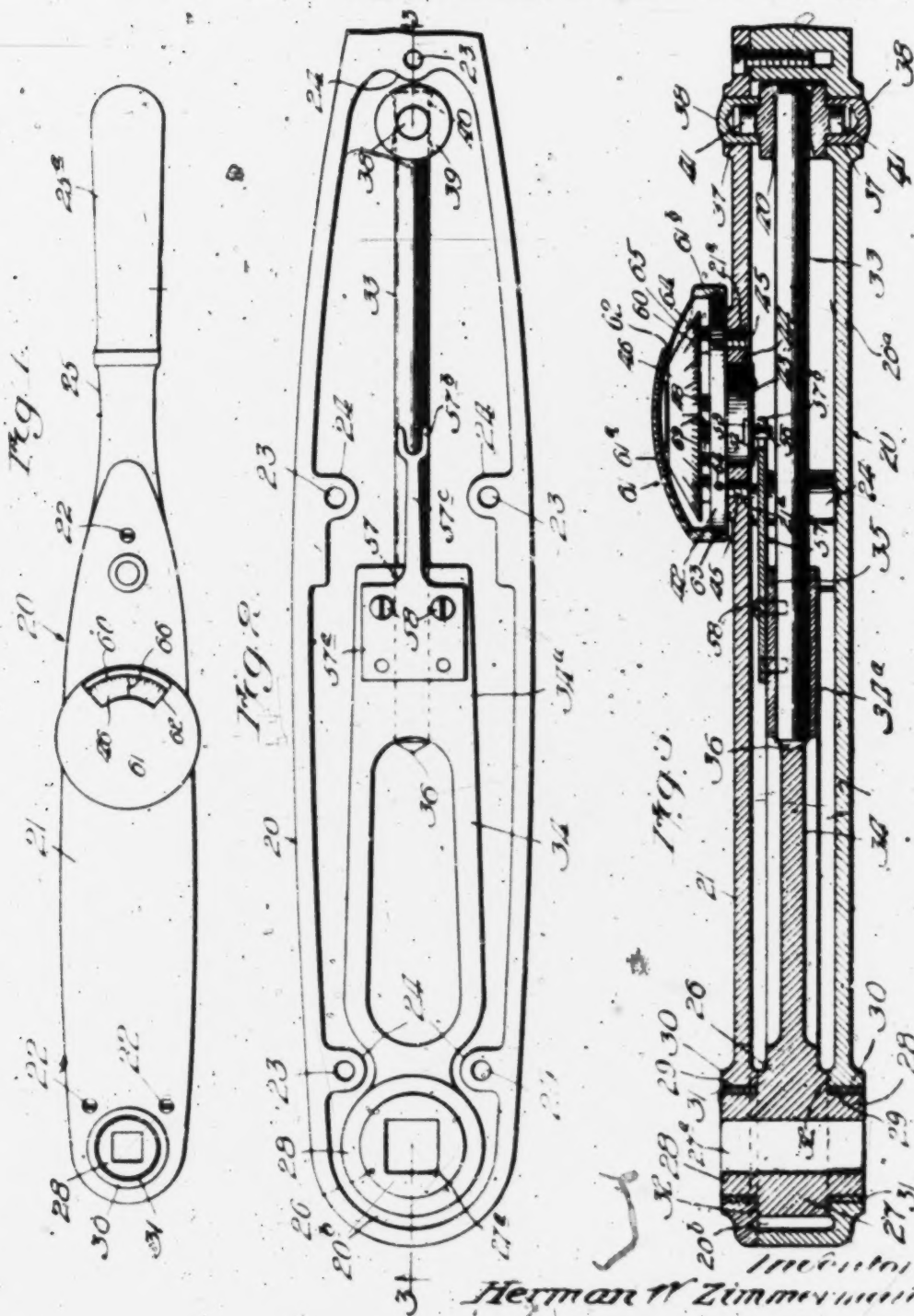
H. W. ZIMMERMAN

Re. 22,219

TORQUE MEASURING WRENCH

Original Filed May 31, 1938

3 Sheets-Sheet 1



Herman W. Zimmerman
by Paul Ludwig Smith & Associates

Nov. 3, 1942.

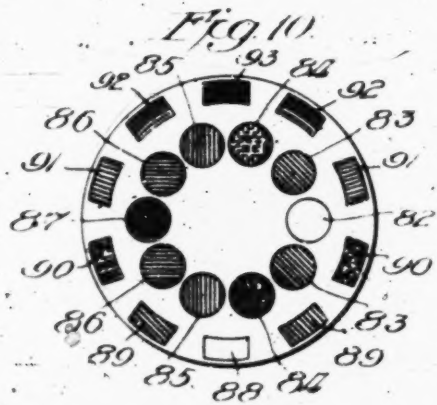
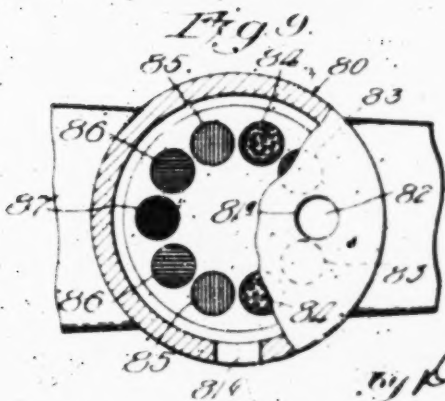
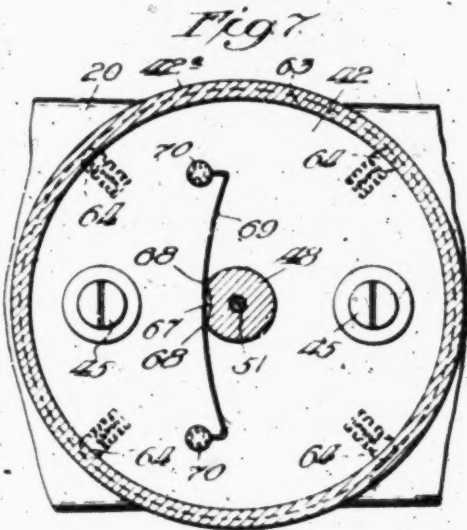
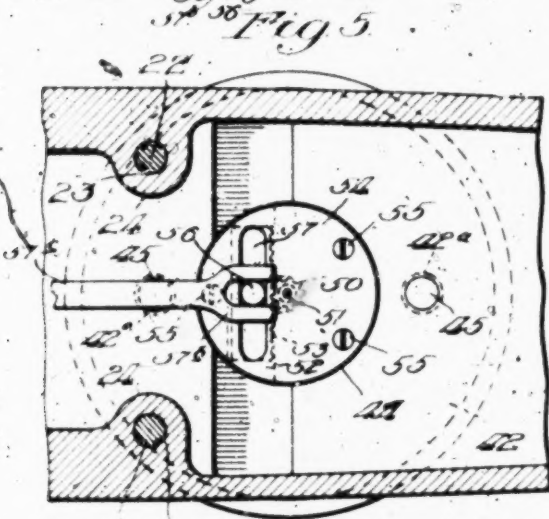
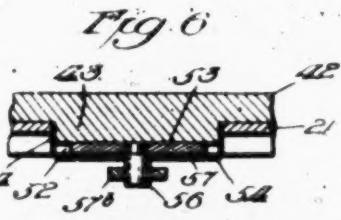
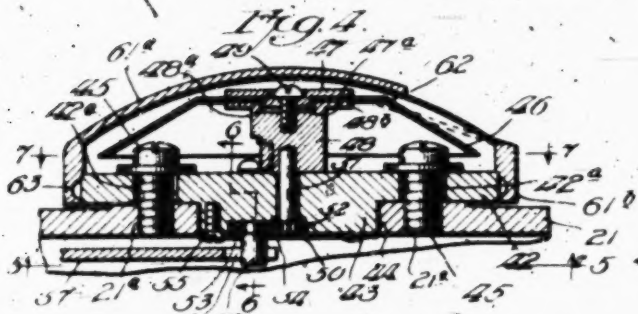
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Re. 22,219

TORQUE MEASURING WRENCH

Original Filed May 31, 1958

3 Sheets-Sheet 2



Inventor:
Herman W. Zimmerman

my dear Sunday, Sunday school

1188
Nov. 3, 1942.

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Re. 22,219

TORQUE MEASURING WRENCH

Original Filed May 31, 1938

3 Sheets-Sheet 3

Fig. 11

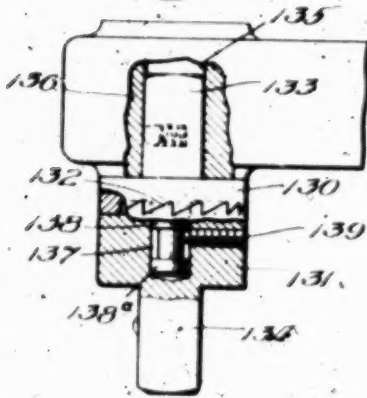


Fig. 13

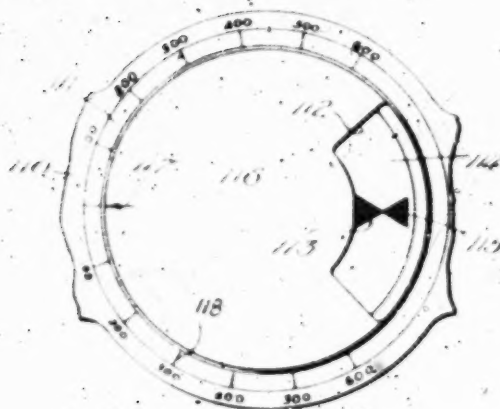


Fig. 12

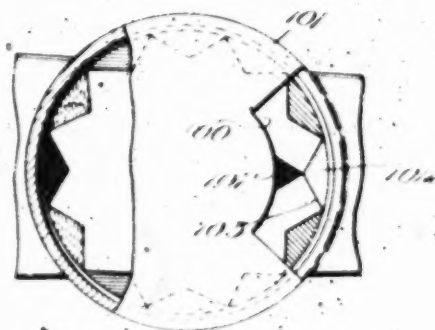
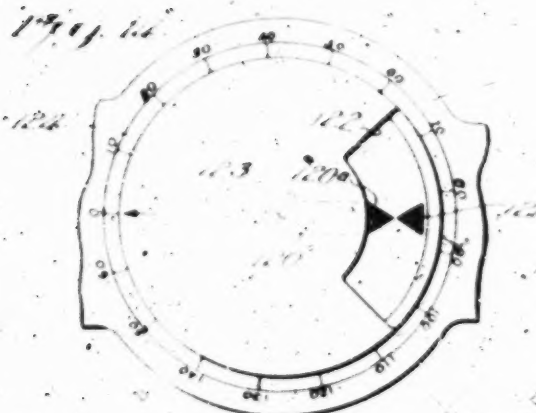


Fig. 14



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by Davis, Lindsay, Smith & Shute

UNITED STATES PATENT OFFICE

22,219

TORQUE MEASURING WRENCH

Herman W. Zimmerman, North Newington, Conn., assignor, by mesne assignments, to Automotive Maintenance Machinery Co., North Chicago, Ill., a corporation of Illinois

Original No. 2,269,503, dated January 13, 1942, Serial No. 210,869, May 31, 1938. Application for reissue January 24, 1942, Serial No. 428,142

31 Claims. (Cl. 265-1)

My invention relates to torque measuring wrenches adapted for determining the force or torque applied therethrough to work such as nuts, bolts, studs and the like.

One of the objects of my invention is to provide an improved torque measuring wrench which is of a simple, inexpensive, rugged and compact construction, and which is adapted to efficiently perform its torque measuring and indicating functions with precision at all times and under all normal conditions of use.

Another object is to provide an improved indicating mechanism for torque measuring wrenches which is of a very simple and inexpensive construction; embodies but few operating parts, is durable and capable of withstanding rough usage, is adapted to accurately record the force or torque applied through the wrench, and is so constructed and arranged that it may be readily and quickly assembled as a complete unit with the remainder of the wrench structure.

A further object is to provide a torque measuring wrench that is well adapted for uniform reproduction in large quantities for production purposes, the arrangement being such that but few wrench parts are employed, which parts are of a character adapted for accurate reproduction in large quantities, and which may be assembled without special selection in wrenches having the same power rating and having the ability to do the same work with uniformity in action and accuracy. The wrench parts are so constructed that corresponding parts of different wrenches having the same power rating may be interchanged without variation in the intended operation and power rating of the wrenches.

Other objects are to provide a wrench of the foregoing character having a pair of relatively movable parts with an elongated spring member engaged at its opposite ends with such parts and yieldably opposing relative movement therebetween, the arrangement being such that the connections between the movable parts and between such parts and the spring member are of precision character adapted to be accurately reproduced in successive wrenches, enabling the connected parts of different wrenches to be interchanged without impairing the intended accuracy of the wrench; to provide an improved connection between relatively movable wrench parts and the gage mechanism by which the gage mechanism may be readily and easily applied and removed without detachment of any of the other wrench parts, and which is of a character adapted to absorb shocks experienced in the use of the

wrench, thereby tending to minimize injury to the gage mechanism; to provide means for insuring return of the gage mechanism to its normal position of rest notwithstanding play or backlash in gears employed in the gage mechanism; to provide improved visual means associated with the gage mechanism by which the operator may readily determine from various angles when the desired pressure is applied to the work; to provide a wrench that may be readily and easily assembled, disassembled and used by an unskilled workman; and to provide a simple and inexpensive, but efficient, ratchet unit that may be readily and detachably applied to the wrench.

Other objects and advantages will become apparent as this description progresses and by reference to the drawings wherein—

Figure 1 is a top plan view of one form of wrench embodying my invention;

Fig. 2 is an enlarged view of the head portion of the wrench shown in Fig. 1, the top cover being removed to illustrate the internal wrench parts;

Fig. 3 is a longitudinal section taken substantially on the line 3-3 of Fig. 2;

Fig. 4 is an enlarged vertical sectional view of the gage mechanism and the parts by which it is associated with the remainder of the wrench structure;

Fig. 5 is a horizontal sectional view taken substantially at the position indicated by the line 5-5 in Fig. 4;

Fig. 6 is a detail sectional view taken substantially on line 6-6 of Fig. 4;

Fig. 7 is a horizontal sectional view taken substantially on line 7-7 of Fig. 4;

Fig. 8 is a vertical sectional view of another form of gage mechanism that may be employed in a wrench embodying my invention;

Fig. 9 is a top plan view of the structure shown in Fig. 8, a portion of the upper part of such structure being shown in section;

Fig. 10 is a diagrammatic outline view of the dial structure shown in Figs. 8 and 9, and by which the relationship of the top and side dial markings is better shown;

Fig. 11 is a fragmental view, partially in section, of a ratchet form of wrench embodying my invention;

Fig. 12 is a top plan view, partially in section, of another form of gage mechanism embodying my invention; and

Figs. 13 and 14 are top plan views of addi-

tional forms of gage mechanism embodying my invention.

The wrench shown in Figs. 1 to 7, inclusive, comprises a hollow head portion 20 having a top cover 21 detachably secured thereto by a plurality of screws 22 that engage threaded openings 23 in bosses 24 formed on the inner wall of the head 20. The head 20 is provided with a rearwardly extending integral handle 25 having a grip portion 25^a adapted to receive and position the hand of an operator in the use of the wrench. If desired, however, the rear end of the wrench head 20 may be provided with a socket (not shown) in which a separate handle-piece is secured.

The head 20 rotatably supports a work-engaging member 26. The work-engaging member 26 is provided with an annular body portion 27 having reduced annular bearings 28 extending axially from the opposite sides thereof for rotatable reception in aligned openings 29 formed in adjacent and opposite thickened wall portions 30 at the forward end of the head 20. Anti-friction bearings 31 are mounted in the openings 29 whereby the work-engaging member 26 is mounted for rotation relative to the head 20 with a minimum of friction. The forward, inner end-wall of the head 20 is rounded complementally to the work-engaging body 27, which is of less diameter than the head end wall, thereby providing a peripheral space 20^b between these parts. The inner ends of the aligned head openings 29 are surrounded by narrow annular seat portions 32 against which the outer edges of the opposite faces of the work-engaging body 27 engage. By such an arrangement, together with the anti-friction bearings 31, the head 20 and work-engaging member 26 are adapted for relative rotation with a minimum of friction.

Relative rotation between the head 20 and work-engaging member 26 is yieldably opposed by an elongated spring bar 33 which is connected at one end to the head 20 and at its other end to the member 26. More particularly, the work engaging member 26 is provided with a rearwardly extending rigid arm 34 disposed at right angles to the axis of rotation of the member 26, which arm has a web-shaped central portion that reduces the weight of the arm without impairing its strength and rigidity. It is desired that the arm 34 be sufficiently rigid to prevent flexing of the same in the use of the wrench and, to that end, it is first formed to the shape shown and then hardened in any suitable fashion.

By forming the arm 34 as stated, it is provided with a full section rear end portion 34^a of predetermined size. This arm portion 34^a is provided with an opening 35 extending substantially parallel with the longitudinal median line of the arm 34, which opening is adapted to receive the forward end of the spring bar 33. The opening 35 is drilled entirely longitudinally through the full section end 24^a of the arm and until it breaks through the rear end thereof into the web portion providing air release ports 36 at the juncture with the web portion of the arm. In this way, the opening is readily formed to a predetermined length and diameter. The fit between the end of the spring bar 33 and the arm opening 35 is sufficiently close to provide a tight pressed fit between these parts, and by providing the openings 36 at the end of the arm opening, I am able to force the forward end of the spring bar 33 entirely home within the

as shown in Fig. 3. In this way, production of large quantities of wrenches is facilitated in that all work-engaging members and their arms may be similarly formed to receive similarly formed spring bars in exactly the same way.

The rear end of the spring bar 33 is rotatably connected to the rear end of the head 20 in the following manner: The bottom wall 20^a of the head and the cover 21 thereof are provided, at the rear of the head 20, with aligned openings 37 in which are received thimble-like anti-friction bearing members 38 which are so positioned that their open ends extend inwardly of the head 20. Connection between the spring bar 33 and the head is directly accomplished by a cylindrical coupling member 39 which is provided with a transverse opening 40 in which the end of the bar 33 is freely received. The walls of the opening 40 flare or diverge outwardly at both ends from the axis of the coupling member so that the contact between such coupling member and the spring bar is substantially only at and on the axis of the coupling member. The coupling member 39 is provided at its opposite ends with axial journals 41 which are snugly and rotatably received in the bearings 38, the arrangement being such that the connection between the head 20 and the spring bar 33 is a rotatable one. This connection permits rotation between the coupling member 39 and the head 20, as well as limited rock movement between the bar 33 and the coupling member 39, so that the bar 33 will at all times be free to flex normally during operation without any cramping action or any other restriction which may tend to set up conditions causing the wrench to register abnormal forces.

I have found that a cylindrical spring bar is well adapted for the attainment of the purposes of my invention. Spring bars of this character may be formed and tempered quite accurately so that successive spring bars having the same power rating may be formed with but a slight and immaterial percentage of error.

The work-engaging body 27 is provided with an axial opening 27^a. This opening is, preferably, of rectangular shape or any other shape adapted to non-rotatably and detachably receive a work-engaging adapter (not shown) of any suitable and well-known form. Preferably, I employ a work adapter which is arranged to connect the wrench and the work with the axes of the work and the work-engaging body 27 coinciding; however, where the work is difficult of access, different and off-center types of adapters may be employed in order to engage the wrench with the work. In the latter case, for accurate results, the hand grip portion 25^a of the wrench handle should be grasped in a uniform manner in order to insure proper pressure indications when working on successive, related pieces of work which are to be set up to the same pressure.

When the work-engaging member 26 is engaged with the work and the handle 25 is grasped and moved in a clockwise direction (as viewed in Fig. 1), the head 20, work-engaging member 26 and the work, through the coupling afforded by the spring bar 33, move together as a unit until the work is tightened to a point wherein the initial tension of the spring bar 33 is overcome. As this happens and rotation of the wrench handle 25 is continued, the spring bar 33 will be flexed, permitting relative rotation be-

of which relative rotation depends upon the pressure applied and the extent of flexing of the spring bar 33. Therefore, by measuring the extent of this relative rotation, I am able to determine the amount of force or torque applied through the wrench to the work, and one form of gage mechanism well adapted to accomplish this will now be described.

The gage structure shown in Figs. 1, and 3 to 7, inclusive, is detachably supported by the cover-plate 21. The gage structure includes a disc-like body member 42 having an axial depending annular part 43 which is freely received in an opening 44 in the cover-plate 21. The plate 42 (Fig. 4) is detachably secured to the cover 21 by screws 45 which freely pass through slightly enlarged openings 42^a in the plate 42 and engage threaded openings 21^a in the cover 21. The foregoing arrangement provides some play in the unsecured gage mounting so that the gage unit may be shifted somewhat for proper connection with the wrench actuating means hereinafter described. When the parts are properly connected, the screws 45 are tightened, holding the gage in a predetermined position.

The gage structure takes the form of a self-contained unit, and it further includes a frusto-conical dial 46 formed of relatively thin and light-weight material such as Celluloid or the like. The top of the dial is provided with a metallic anchor member 47 having a depending annular part 47^a adapted to be snugly received in a similarly shaped axial opening 48^a formed in the upper end of a rotatable dial support 48. The upper end of the dial support 48 is provided with an enlarged head portion 48^b providing with the anchor member 47 an adequate support for the dial 46. The dial 46 is detachably secured to its support 48 by a screw 49 passing through the anchor-piece 47 and engaging a threaded opening in the support 48.

The dial support 48 is adapted to seat and rotate upon the top of the body member 42, and rotation is imparted to it through a pinion 50 on the lower end of a shaft 51 axially secured to the lower end of the support 48. The shaft 51 is rotatably supported in an opening in the body member 42, the lower end of which opening is enlarged to provide a recess 52 in which the pinion 50 is received.

The pinion 50 is adapted to be actuated by a rack bar 53 which is also located in the recess 52. The rack bar 53 and pinion 50 are retained in operative relation by a comparatively thin plate 54 secured to the bottom of the part 43 by a plurality of screws 55. The rack bar 53 carries a centrally disposed and depending pinion 56 which projects downwardly through an elongated slot 57 formed in the plate 54. By moving the rack bar 53 back and forth, the pinion 56 is rotated, in turn rotating the dial support 48 and the dial 46.

Movement of the sliding rack bar 53 by the relative rock movement of the wrench parts 20 and 26 is accomplished through a flat, bar-like coupling member 57, the forward end 57^a of which (Figs. 2 and 3) is of enlarged rectangular-like shape and is secured to the rear end of the work-engaging arm 34 by screws 58. The coupling member is further provided with an elongated narrow stem part 57^b having a fork 57^c at its rear end. The coupling member stem 57^c is of such length that its fork 57^c is aligned with and receives the pin 56 carried by the rack bar 53. With this arrangement, as the wrench

head 20 and the work-engaging member 26 rock relatively, the gage mechanism moves relatively to the coupling member 57, thereby imparting movement to the pin 56 and the rack bar 53, in turn, rotating pinion 50, dial support 48 and dial 46. The forked engagement between the coupling member 57 and pin 56 accommodates arcuate movement of these parts during their relative movement.

Wrenches of this character are subjected, at times, to severe shocks and movements which, unless otherwise guarded against, will tend to injure gear-type gage mechanisms. For example, if, in tightening a bolt, stud or other piece of work, breakage of the work should occur while a considerable pressure is being applied to the work, the instantaneous release and reverse actuation of the gage mechanism under the existing tension condition would tend to strip the gears of the gage mechanism. Also, in loosening a piece of work, considerable pressure may be required to move the work and the initial movement, once it is started, may be quite sudden so that the gage mechanism is subjected to shock and movement much like that which occurs when a piece of work breaks. In carrying out my invention, I avoid injury to the gage mechanism under the foregoing conditions by employing a gage coupling member 57 which is adapted to flex and absorb the shocks that are experienced under the conditions in question. Specifically, the coupling member 57 is formed of a high-grade steel material and the coupling arm 57^a thereof is of such width that it will tend to flex when a predetermined pressure is applied to the forked end 57^b thereof; but the pressure required to flex the arm 57^a is greater than any pressure that will be exerted on the member 57 in the normal relative rotation of the wrench parts. In other words, the pressure normally exerted on the member 57 is only that required to move the sliding rack bar 53, pinion 50 and the dial unit, which pressure is necessarily very much less than that which would be suddenly exerted on the arm 57^a by the spring bar 33 in case of abrupt release of the parts with the spring bar under any considerable tension.

The side wall of the gage dial 46 (Fig. 3) is provided with a scale 60 graduated from zero in opposite directions to indicate, preferably, relative movement of the parts and pressure applied to the wrench in terms of inch-pounds pressure. The dial is enclosed by a removable and rotatably adjustable cover 61 having a dome-shaped top wall 61^a and a depending annular side wall 61^b. The top wall 61^a of the cover is provided with a sector-shaped window 62 near its periphery through which the angularly disposed scale 60 of the dial 46 may readily be observed.

The cover 61 is detachably secured to the gage body member 42. Specifically, the cover side wall is provided near its bottom edge with an internal annular groove 63. The peripheral edge of the gage body 42 is provided with a plurality of apertures in which spring-pressed balls 64 are received, the arrangement being such that the cover 61 is adapted to be snapped upon the gage plate 42 with the balls 64 received in the grooves 63. In this way, outward accidental displacement of the cover is avoided and such cover may be rotated to any position relative to the dial where it will be held by the tension of the spring-pressed balls 64. The cover 61 may be removed intentionally by applying sufficient pres-

sure to its lower edge to overcome the tension of the spring-pressed balls 64.

It will be appreciated that the operator, in using the wrench, may assume various positions, in which he must observe the dial 46 from various angles. To facilitate the reading of the dial scale 60 under these conditions, the cover window 62, which is covered by a transparent member 65, is located in the inclined wall surface of the dome-shaped top 61 of the cover. This wall surface extends in a direction substantially parallel with the slanting side wall of the dial 46 on which the scale 60 is located. With such an arrangement, the operator may read the dial scale 60 at various angles from beyond the vertical to below the horizontal and from the opposite sides of the wrench. The transparent window 65 is provided with a centrally disposed indicating line 66 which is adapted to register with the graduations of the dial scale 60. In use, for example, the cover indicating line 66 may coincide with a zero point on the scale 60 when the wrench is at rest; and, if it is desired to set up a piece of work to a desired pressure, such pressure will have been reached when the dial 46 is rotated to an extent to register that pressure indication on the dial 46 with the indicating line 66. Or, if desired, the cover 61 may be rotated relative to the dial, in the at-rest position of the wrench; until its indicating line 66 coincides with a certain pressure graduation on the dial 46 and, when sufficient pressure is applied to the wrench to rotate the dial to bring its zero scale marking into coincidence with the line 66, the intended pressure has been applied.

Gage mechanism of the foregoing character must necessarily be sensitive and operate with precision. It is, therefore, highly desirable where the dial motion transmitting means includes gears to provide means compensating for play and backlash necessarily existent in the use of such gears. Otherwise, variation in the normal at-rest position of the dial may occur. To avoid any such condition, I provide spring means (Figs. 4 and 7) for always returning the dial when the wrench is at rest to a predetermined normal, at-rest position.

To the foregoing end, one side of the lower portion of the dial support 48 is provided with a concave cut-out 67 forming point contacts 68 that are engaged by an elongated spring member 69 having its opposite ends supported by posts 70 on the opposite sides of the member 48. The posts 70 are so located and the spring 69 is so shaped that the latter engages the points 68 under tension. With this arrangement, the dial support 48 will always be returned to its normal, at-rest position (Fig. 7) notwithstanding any play or backlash between the teeth of the slide rack bar 53 and pinion 56, due to the fact that the spring 69 always tends to rotate the member 48 to its center position with both of the contact points 68 engaged as the member 48 approaches its normal, at-rest position. The spring 69 further tends to act as a brake in steadying the rotative movement of the dial structure in any position thereof.

It will be seen from the foregoing that I have provided a highly efficient wrench while using but few parts in the wrench structure as a whole, including the gage mechanism. I have also provided an arrangement which may be quickly and easily assembled and disassembled without the

the work-engaging member may be first applied to the wrench head 20 and it is secured in place therein merely by applying and securing the cover plate 21. The gage mechanism may be readily applied as a unit, it being only necessary to insert the part 43 in the cover opening 44 at a position wherein the screws 45 will engage the openings 21, in which position the depending rack bar pin 56 will be received in the forked end 57 of the coupling member 57. After the plate 42 with its dial support 48 are thus secured, the dial 46 may be secured to the support 48 and the cover 61 then snapped in place. For sake of precision in operation and also as an aid in reproduction of similarly powered and acting wrenches in large quantities, the axis of the rotatable connection between the head 20 and work-engaging member 25, the rotatable axis of the connection between the rear end of the spring bar 33 and the head 20, and the axis of the gage-receiving cover opening are all longitudinally aligned. This facilitates assembly and proper fit of the parts without the necessity of specially fitting and testing individual parts and wrenches.

I have also found that the weight of the dial is of importance from the standpoint of injury to gear mechanism upon sudden operations causing shocks in the use of the wrench. In other words, the lighter the dial structure, the more satisfactory it is from the foregoing standpoints. For that reason, as above stated, the dial 46 is formed of very thin and light-weight material which may be readily applied to rotatable supporting structure, as shown in Fig. 4, without the use of weight-increasing liners or supports.

It will be understood that the dial may take various shapes and may carry different indicating media such, for example, as those shown in Figs. 8 to 10 and 12 to 14. Specifically, with respect to Figs. 8 to 10, inclusive, the gage structure illustrated is similar to that previously described except that the dial 46 is provided with a flat top 80 and a skirt 86 extending at substantially right angles thereto. The cover 61 is similarly shaped, being provided with a circular opening 81 in its top and a rectangularly-shaped opening 81' in its skirt, the two openings being located approximately 90 degrees apart.

The dial 46 is provided with color indicia on both the top and skirt thereof, each color indicating a certain pressure or a certain desired position which the gage is to assume in order to properly set up a piece of work. More particularly, the top of the dial is provided with a plurality of colored discs that are adapted to coincide with the top cover opening 81. These discs may be so arranged that in the normal, at-rest position of the wrench a white disc 82 registers with the cover opening 81. Extending both clockwise and counterclockwise (as viewed in Fig. 10) from the white disc 82, the discs 83 may be colored green, the discs 84 may be yellow, the discs 85 may be red, the discs 86 may be blue, and the disc 87 may be black. Likewise, the side wall of the dial may be provided with a white area 88 adapted to coincide with the side wall cover opening 81' in the normal, at-rest position of the wrench, and it may also be provided with oppositely extending rows of green areas 89, yellow areas 90, red areas 91, blue areas 92 and a black area 93. The arrangement of the discs on top of the dial and the squares in the skirt

color, upon movement of the wrench in either direction, as to tighten or loosen the work, registers with the top cover opening 81^a, a similarly colored disc will register with the opening 81^b in the side wall of the cover. In this way, the operator is able to determine the pressure indicated by the wrench from the various positions that he may assume in using the wrench. I have found dial structure of this character to be useful where the wrench is to be used for different kinds of work that is to be set up to different pressures. Each color may indicate a certain pressure and, following instructions given as to the pressure indicated by each color, the workman using the wrench need only be instructed to set up one piece of work to the yellow color, another piece to red, another to blue, etc. Or, if desired, the cover 81 may be rotated so that its openings register with a particular color, instructions being given to set up the piece of work until the white color marks register with the cover openings.

In Fig. 12 I have shown a dial similar to that just described, except that the dial and cover therefor are shaped similarly to the corresponding parts shown in the first-described form. In this form, the transparent window 100 of the cover 101 is provided with a black V-shaped indicating mark 102. The slanting side wall of the dial is provided with a plurality of inverted V-shaped color zones 103 which may be colored similarly to the areas shown in Fig. 10, or in any other way desired. In this form, I may employ a white zone 104 which, when its apex coincides with that of the black mark 102 on the cover, indicates the normal, at-rest or zero position of the device. Relative movement between the wrench parts results in movement of the dial color zones relative to the black cover mark 102 and any particular color zone may represent a predetermined-pressure condition or the extent to which any particular piece of work should be tightened.

In Fig. 13 I have shown a dial arrangement shaped similarly to that of Figs. 4 and 12 but having different pressure indicating means. In this form, the top cover 110 of the wrench is provided with a scale 111 having a zero point and graduations extending in opposite directions therefrom indicating, preferably, inch-pounds pressure. The transparent cover window 112 is provided with a V-shaped black indicating mark 113 and the slanting side wall 114 of the dial is provided with a triangularly shaped indicating mark 115. In the zero position of the wrench parts, the apexes of the marks 113 and 115 coincide. If it is desired to set up a piece of work to a point requiring the application of, say 300 inch-pounds pressure, the cover 110 is rotated in clockwise direction (as viewed in Fig. 13) until its arrow mark 117 coincides with the 300 mark 118 on the scale 111. With the wrench so set, the work is then tightened until a sufficient pressure is exerted to cause rotation of the dial 114 in a clockwise direction to bring its indicating mark 115 into alignment with the cover mark 113. Indications are given in a similar manner when the wrench is rotated in the opposite direction, as when loosening the work.

In Fig. 14 I have shown an indicating means similar to that of Fig. 13 except that a hand or pointer 120 is used instead of a dial such as shown in Figs. 4 and 13. In this form, the outer end 120^a of the hand or pointer is V-shaped and in the normal zero position of the wrench its

apex coincides with that of a triangularly shaped mark 121 on the transparent window 122 of the cover 123. In this form, a scale 124 similar to the scale 111 of Fig. 13 is employed and the device is used in the same way as that of Fig. 13. The use of a hand 120 instead of a complete dial still further reduces the weight of the rotating dial structure, thereby further aiding in precision of operation.

At times it may be desirable to use a wrench of the foregoing character with a ratchet feature and, for that purpose, I provide an improved form of ratchet unit that may readily be attached to and disconnected from the wrench. One form of the unit that I employ is shown in Fig. 11.

Specifically, the ratchet structure includes a pair of ratchet heads 130 and 131, each of which is provided with ratchet teeth 132 adapted to be engaged in the manner illustrated. These heads also are provided on their outer surfaces with axial extensions 133 and 134, respectively, which are adapted to non-rotatably engage in irregularly shaped opening 135 of the work-engaging member 136 or in a similar opening formed in a work adapter (not shown). The head 131 is further provided with an axial recess 137 in which is received the enlarged head 138^a of a pin or projection 138 axially carried by the head 130. A screw 139 carried by the head 131 is provided with a reduced end portion projecting into the recess 137 where it is adapted to be engaged by the head 138^a of the pin 138, thereby limiting the extent to which the ratchet heads may be separated. The extent of this movement need only be slightly greater than the depth of the ratchet teeth 132 whereby the ratchet heads may be separated in axial direction for movement of one relative to the other as in the non-ratcheting movement of the ratchet structure. The wrench structure may be similar to that shown in Figs. 1 to 3, inclusive, or it may take any other form suitable for connection with the ratchet unit. In the use of the structure, with the ratchet unit engaged with the work, the weight of the wrench is normally sufficient to move and hold the uppermost ratchet head in operative engagement with the lower ratchet head. If the work is being tightened, backward or counterclockwise movement of the wrench will result in the ratchet teeth of the lower ratchet head camming the ratchet teeth of the upper head out of engagement therewith so that no movement of the work takes place; but, upon the reverse movement of the wrench, the teeth normally move into engagement with each other and form a rigid unit through which pressure is directly applied to the work. Either shank extension of the ratchet unit may be connected to the wrench, which is an added convenience in applying the ratchet unit. Also, the ratchet unit may be employed as an accessory for other types of wrenches and for converting the same for ratchet operation. It will be seen from the foregoing that I have provided a very simple and inexpensive ratchet structure which embodies but few parts, none of which is of a character likely to get out of working condition in the ordinary use of the wrench.

I believe that the operation and advantages of my invention will be apparent from the foregoing description. The wrench embodying my invention is not only simple in construction but it is inexpensive to manufacture. At the same time, the wrench is adapted to accurately measure

the pressure applied. The parts of the wrench are such that they may be accurately reproduced and stocked so that successive wrenches may be assembled from parts indiscriminately selected, thereby providing a wrench capable of satisfactory manufacture on a large production basis. Individual selection, testing and adjusting of wrenches is not necessary.

I claim:

1. A torque measuring wrench comprising an elongated head member, a work-engaging member rotatably mounted in said head member at the front end thereof and having a part exteriorly accessible for connection with the work, a rigid arm on said work-engaging member extending rearwardly within said head member and having a longitudinal opening of predetermined size leading from its rear end toward the axis of rotation of said work-engaging member and at right angles thereto, said arm also having at least one vent opening connecting the inner end of said opening to atmosphere, an elongated spring bar in said head member and having one end shaped similarly to said arm opening and fitted therein so that such bar end extends substantially to the inner end of said arm opening, means connecting the other end of said spring bar to said head member so that said spring bar serves as the sole means opposing relative movement between said members, and means for associating one of said members with an indicating means adapted for measuring relative movement between said members in a manner to indicate pressure applied to the work.

2. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising an elongated head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-engaging member, bearing elements secured in said head member openings, and a pair of oppositely extending and axially aligned bearing members on said bar-supporting member and extending at substantially right angles to said bar-receiving opening and rotatably received in said bearing elements.

3. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising an elongated head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having an opening therein in which the end of said spring bar is freely received, said head member having aligned openings in the top and bottom walls thereof with their axes extending substantially parallel with the axis of rotation of said work-

engaging member, thimble-shaped anti-friction bearing elements mounted in said head member openings with their open ends extending inwardly toward each other, and axially aligned bearing members on said bar-supporting member and rotatably received in said bearing elements.

4. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising a head member having top and bottom walls, a work-engaging member rotatably mounted in the top and bottom walls of said head member, a spring bar having one end secured to said work-engaging member, and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a bar-supporting member having opposed and axially aligned bearing members, said bar-supporting member also having a bar-receiving opening extending therethrough at substantially right angles to the axis of said bearing members, the opposite end walls of which opening converge inwardly toward the mid-portion of such opening so that said bar is normally engaged therein substantially on the axis of said bearing members, said bearing members being rotatably carried by the top and bottom walls of said head member.

5. A torque measuring wrench comprising a head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end thereof in said top and bottom walls and an intermediate opening in said top wall, all of said openings having their centers substantially longitudinally aligned with each other, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, whereby said bar serves as the sole means opposing relative movement between said head and work-engaging members, mechanism indicating the pressure applied to the work including a part fitting in said intermediate opening, operating means supported by said mechanism part, coupling means operably connecting said work-engaging member with said operating means, said rotatably mounted parts being so constructed and arranged and all said openings so aligned that said coupling means and operating means are operably engaged merely by moving said mechanism part to one predetermined position relative to said coupling means and inserting it axially within said intermediate opening.

6. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by one of said members and including an operating part movable back and forth, and coupling means carried by the other of said members and having an element adapted to receive said operating part for moving the latter back and forth as said members rock relatively, said coupling means being adapted to flex in the direction of movement of said operating part.

7. A torque measuring wrench comprising a pair of members rockably connected together,

means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by said other member and including an operating part movable back and forth, and a coupling member connected at one end to said one member and having its other end free and constructed to receive said operating part for imparting motion thereto as said members rock relatively, said coupling member being adapted to flex when subjected to pressure greater than that required to impart motion to said operating part, whereby shocks caused by release of the wrench when said spring means is under operating tension is absorbed by said arm, preventing injury to the operating parts of the gage mechanism.

8. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, pressure indicating means carried by said other member and including a rotatable indicator, gear means for rotating said indicator, a member slidable back and forth for operating said gear means, and a coupling member connected at one end to said one member and having its other end free and of suitable shape for receiving said slidable member and for actuating the latter upon relative rock movement of said members, said coupling member being constructed and arranged to flex when subjected to pressures greater than the pressure exerted therethrough to actuate said slidable member whereby shock caused by release of the wrench parts when they are subjected to high work-applied pressures is absorbed by said coupling member, preventing injury of said indicating means.

9. A torque measuring wrench adapted for use with means for indicating the force applied by the wrench to the work comprising, a head member, a work-engaging member rotatably mounted in said head member, a spring bar having one end secured to said work-engaging member and a connection between the other end of said spring bar and said head member whereby said spring bar opposes relative movement of said members, said connection including a supporting member having bearing means rotatably supported in said head member, said supporting member also having an opening extending there-through at substantially right angles to the axis of said bearing means, and the wall of said opening converging inwardly in such a manner as to provide a substantially line contact with said spring bar.

10. A torque measuring wrench comprising a head member having top and bottom walls, said head member having aligned circular openings at the forward end thereof in said top and bottom walls, aligned circular openings at the rear end of said head member in said top and bottom walls and an intermediate opening in said top wall, a work-engaging member having parts rotatably mounted in said forward openings, a spring bar connected at one end to said work-engaging member, a connection between the other end of said bar and said head member including a member having parts rotatably mounted in said rear openings, said intermediate opening being constructed and arranged to receive an oper-

ating part of a pressure indicating mechanism, and means carried by said work-engaging member and adapted to be operably engaged with the operating part of the indicating mechanism merely by axial insertion of such mechanism part in said intermediate opening from a certain position relative thereto.

11. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing rock movement between said members, gage mechanism carried by said other member, a pair of operating parts, one carried by said work-engaging member and the other by said gage mechanism, for operating said gage mechanism upon relative rock movement of said members, one of said parts being adapted to flex when subjected to pressure greater than that required to impart motion to the other of said parts, whereby shocks caused by release of the wrench when said spring means is under operating tension are absorbed by said operating parts thereby preventing injury to the gage mechanism.

12. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be operably engaged with the work, means on the other of said members by which it may be moved, spring means yieldably opposing relative movement of said members, gage mechanism carried by one of said members and including an operating part movable back and forth, a coupling part operably associated with the other of said members, one of said parts being constructed and arranged for connection with the other part for causing simultaneous movement of both parts as said members rock relatively, one of said parts having flexing ability in a direction parallel with said simultaneous movement thereby tending to absorb shocks caused by release of the wrench when said spring means is under operating tension preventing injury to said gage mechanism.

13. A torque measuring wrench comprising a head member having top and bottom walls, one of said walls having an opening therein intermediate its ends, a work-engaging member having axially aligned parts rotatably mounted in the forward part of said head member, a spring bar connected at one end to and extending rearwardly from said work-engaging member, a connection between the other end of said bar and said head member including a member rotatably mounted in said head member, pressure indicating means including a depending operating part adapted to be received in said opening, and means movable upon relative movement of said work-engaging and head members and flexing of said spring bar, said means and said operating part being so relatively constructed and arranged that such means is operably engaged with said operating part merely by axial insertion of said part of the gage mechanism in said opening at a certain rotary position relative thereto.

14. A torque measuring wrench comprising a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator means carried by one of the members, and flexible means

carried by another of the members and being cooperable with said indicator means for effecting an indication of the force applied to the work, said flexible means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

15. A torque measuring wrench comprising, a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator means carried by one of said members and including an operating-part, and flexible coupling means carried by another of said members and having an element adapted to be operably connected with said operating-part for effecting an indication of the force applied to the work, said flexible coupling means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

16. A torque measuring wrench comprising a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member yieldably opposing relative rock movement of said rockable members, indicator mechanism carried by one of the members and including an operating-part movable back and forth in the direction in which said spring member bends as said members rock relatively, and flexible coupling means carried by another of the members and having an element adapted to be operably connected with said operating-part for moving the latter back and forth as said members rock relatively, said flexible coupling means having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member.

17. A torque measuring wrench comprising a pair of members rockably connected together, one of said members being adapted to be connected with the work and the other of said members being adapted to have a turning force applied thereto, a normally straight spring bar member carried by one of said rockable members and being operably engaged with the other of said rockable members and being adapted to flex as said rockable members rock relatively, indicator mechanism carried by one of said rockably-connected members and including an oscillatable indicator-operating part, and means carried by another of said members for coupling it to said indicator-operating part, said means including a flexible coupling element having operative engagement with said indicator-operating part, said coupling element having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member, whereby relative rock movement of said rockable members imparts movement to said coupling element and, in turn, oscillating movement to said indicator-operating part to operate said indicator mechanism and said flexible element tends to absorb the shock on said indicator mechanism in the event of a sudden release of the force being transmitted through the wrench.

18. A torque measuring wrench comprising, a pair of members rockably connected together, one of said members being adapted for engagement with the work and the other being adapted to be

actuated to apply a turning force to the work, a normally straight flexible spring bar member carried by one of said rockable members and being operatively engaged with the other of said rockable members so as to yieldingly oppose relative rock movement of said rockable members, force indicating means carried by one of said rockable members and including an indicator-operating part, and means for coupling said indicator-operating part to one of the other of said members, said means including an elastic element having relatively greater flexibility than said spring bar member in the direction of bending of said spring bar member, whereby when said wrench is in use said indicating means will be actuated to indicate the force applied to the work upon relative rock movement of said rock members and said flexible element tends to absorb the shock on said indicating means in the event of a sudden release of the force being transmitted through the wrench.

19. A torque measuring wrench comprising, a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, said bore extending in a direction transverse to the axis of rotation of said work-engaging member, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end operably connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicator means operable as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

20. A wrench as defined in claim 19, in which the bore is substantially circular in cross-section and in which at least the portion of the spring bar member which is mounted in said bore is of corresponding cross-section.

21. A torque measuring wrench comprising a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, said bore extending in a direction transverse to the axis of rotation of said work-engaging member, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end swivelly connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, and indicator means operable as said head member and work-engaging member rotate relative to each other for indicating the force applied to the work through said members and spring bar.

22. A torque measuring wrench comprising, a head member, a work-engaging member rotatably mounted with respect to said head member and having a portion provided with a bore, an elongated spring bar member having one end thereof securely mounted in said bore and having its opposite end swivelly connected with said head member for yieldably opposing relative rotary movement of said head member and work-engaging member, indicator means, and flexible means operably connected with one of said members and with said indicator means for actuating said indicator means to indicate the force applied to the work through said members and spring bar.

23. A torque wrench adapted for use with means for indicating the force applied to the

work comprising, a head member, a work-engaging member rotatably connected to said head member, an arm extending substantially radially from said work-engaging member, said arm having a longitudinal bore extending from its outer end toward the axis of rotation of said work-engaging member, an elongated spring bar yieldably opposing relative rotary movement of said head and work-engaging members, said spring bar having one end fixedly mounted in and extending substantially to the rear end of said longitudinal bore, means connecting the opposite end of said spring bar to said head member, said means being such as to permit pivotal movement of said spring bar relative to said head member, and means operable upon flexing of said spring bar and consequent relative rotary movement of said head and work-engaging members for operating said indicating means to indicate the force applied to the work.

24. A torque measuring wrench comprising a pair of members, one of said members being adapted to be connected with the work and the other of said members being adapted to have an operating force applied thereto, yieldable torque resisting means operatively connecting said members together arranged so that an operating force applied to said one member is transmitted to the other member to turn the work, the member adapted to be connected with the work including a portion that is rotatably movable relative to the other member by force applied to the work upon yielding of said torque resisting means, indicator means carried by one of the members, and actuating means carried by the other of the members and being cooperable with said indicator means for effecting an indication of the force applied to the work in response to said relative movement, said actuating means comprising a normally unflexed member having sufficient flexibility to absorb shocks caused by release of the wrench when under operating stress, thus preventing injury to said indicator means.

25. A torque measuring wrench comprising a pair of members, one of said members being a work-engaging member adapted to be connected with the work and the other of said members being a handle member adapted to have a turning force applied thereto, yieldable torque resisting means operatively connecting said members together arranged so that turning force applied to said handle member is transmitted to said work-engaging member to turn the work, said work-engaging member including a part rotatably movable relative to said handle member upon yielding of said torque resisting means in proportion to the force applied to the work, indicator means carried by said handle member, and flexible means carried by said part of said work-engaging member, said flexible means comprising a normally unflexed member cooperable with said indicator means for effecting an indication of the force applied to the work, said last-mentioned member having sufficient flexibility to serve as a shock absorbing means to prevent injury to said indicator means upon release of the wrench while under operating tension.

26. A torque wrench comprising: a handle member including an elongated body member having a chamber extending throughout substantially the full length thereof and an elongated cover member adapted to be attached to said body member to form a closure for said chamber; indicator means carried by one of said mem-

bers; a work-engaging member having a portion in said chamber and being constructed so that it can be operatively connected with the work; a substantially rigid member in said chamber fixed at one end thereof to said work-engaging member and extending substantially radially from said work-engaging member lengthwise of said chamber, a relatively flexible element carried by the opposite end of said rigid member, yieldable torque resisting means providing an operating connection between said handle member and said work-engaging member arranged so that at least the portion of said work-engaging member which is connected to said rigid member can move relative to said handle member during the application of force to the work, and means operatively connecting the free end of said flexible element with said indicator means to actuate said indicator means in response to relative movement of said rigid member with respect to said handle member, said flexible element serving to absorb shocks caused by release of the wrench when under operating stress, thus preventing injury to said indicator means.

27. A torque wrench comprising a casing member, a work-engaging member mounted in said casing member and displaceable relative thereto, means by which said work-engaging member may be engaged with the work, means on said casing member by which it may be moved, yieldable torque resisting means between and opposing relative displacement of said casing and work-engaging member, indicating mechanism carried by said casing member and including an indicating element and a movable operating part therefor, and coupling means secured at one end thereof to said work-engaging member, the opposite end of said coupling means being relatively free and having an element operably connected with said operating part for moving the latter as said casing and work-engaging members are displaced relatively, said coupling means having flexing ability in a direction parallel with the direction of displacement of said casing and work-engaging members.

28. A torque wrench comprising a pair of members rotatably displaceable relative to each other, one of said members having an element adapted to be engaged with the work, the other of said members having a handle by which it may be moved, yieldable torque resisting means opposing relative movement between said members, and torque measuring means including a gage member on said member having the handle, said gage member having a movable gage operating part, a rigid arm connected to said member having the work-engaging element, a flexible extension on said arm, and a coupling element on said extension adapted to be operably connected to said operating part for operation of said gage member as said members are rotatably displaced, said flexible extension serving to absorb shocks on said gage member.

29. A torque measuring wrench comprising, a handle member, a work-engaging member, yieldable torque transmitting means between said handle member and work-engaging member providing an operative connection between said members for transmitting turning force from said handle member to said work-engaging member, an indicator carried by one of said members for indicating the force applied to the work, and means for actuating said indicator operatively connecting the other of said members with said indicator, said indicator actuating means being

movable transversely to said handle member and including shock absorbing means for absorbing shocks which would otherwise be transmitted to said indicator when said wrench is released while under operating stress, said shock absorbing means being flexible in the direction of movement of said indicator actuating means.

30. A torque measuring wrench as defined in claim 29, in which the shock absorbing means comprises a normally unflexed bar.

31. A torque measuring wrench comprising a pair of members rockably connected together, means by which one of said members may be engaged with the work, means on the other of said members by which it may be moved, spring 15

means yieldably opposing rock movement between said members, gage mechanism carried by the one of said members having means by which it may be moved, said gage mechanism including an operating part movable back and forth, and coupling means carried by the one of said members having means for engaging it with the work, said coupling means having an element adapted to receive said operating part for moving the latter back and forth as said members rock relatively and said coupling means being adapted to flex in the direction of movement of said operating part.

HERMAN W. ZIMMERMAN.

2071 Northern District of Illinois, }
Eastern Division. } ss.

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled Automotive Maintenance Machinery Co. vs. Precision Instrument Manufacturing Company, et al., Civil Action No. 4382 Consolidated, as the same appears from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 30th day of August, A. D. 1943.

(Seal)

Roy H. Johnson,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the record, which together with Volume I thereof, constitute the printed record, printed under my supervision and filed on the seventeenth day of November, 1943, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,
vs.

Precision Instrument Manufacturing Company, Kenneth
R. Larson and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(Seal)

(signed) Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

Automotive Maintenance Machinery Company,
8392 *Plaintiff-Appellant,*
vs.
Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,
Defendants-Appellees.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the thirtieth day of August, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth
R. Larson and Snap-On Tools Corporation,
Defendants-Appellees.

The Clerk will enter our appearances as counsel for
Plaintiff-Appellant.

Frank Parker Davis,
332 South Michigan Ave.
Harry W. Lindsey, Jr.,
332 South Michigan Ave.
Raymond E. Fidler,
332 South Michigan Ave.
George N. Hibben,
332 South Michigan Ave.

Endorsed: Filed August 30, 1943. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the second day of September, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No: 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant,

vs.

Precision Instrument Mfg. Company, *et al.,*
Defendants-Appellees.

The Clerk will enter our appearance as counsel for Defendant-Appellee Snap-On Tools Corporation.

Will Freeman,
1400 Field Bldg.,
Chicago

W. P. Bair,
1400 Field Bldg.,
Chicago, Illinois.
Phone—Randolph 5777
Bair & Freeman.

Endorsed: Filed September 2, 1943. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the second day of September, 1943, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Company,
*Plaintiff-Appellant.**vs.*Precision Instrument Mfg. Company, *et al.*,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for Appellees Precision Instrument Mfg. Co. and Kenneth R. Larson.

Casper W. Ooms,
209 S. La Salle St.,
Chicago, Ill.

Endorsed: Filed September 2, 1943. Kenneth J. Car-
rick, Clerk.

Appearance for Appellant.

1207

And afterwards, to-wit: On the twentieth day of January, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,
Plaintiff-Appellant.
vs.

Precision Instrument Manufacturing Company, Kenneth R.
Larson and Snap-On Tools Corporation,
Defendants-Appellees.

The Clerk will enter my appearance as counsel for Plaintiff-Appellant.

Albert J. Smith,
120 South La Salle Street,
Chicago.

Endorsed: Filed January 20, 1944. Kenneth J. Garrick,
Clerk.

And afterwards, to-wit: On the twenty-third day of March, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8392.

Automotive Maintenance Machinery Co.,

Plaintiff-Appellant,

vs.

Precision Instrument Mfg. Co., Kenneth R. Larson and
Snap-On Tools Corp.,

Defendants-Appellees.

The Clerk will enter my appearance as counsel for Appellees—Snap-On Tools.

Dayton Ogden,
111 W. Monroe St.,
Chicago.

Endorsed: Filed March 23, 1944. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twentieth day of April, 1944, the following further proceedings were had and entered of record, to-wit:

Thursday, April 20, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. J. Earl Major, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

Automotive Maintenance Machinery Company,

Plaintiff-Appellant,

8392

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Frank Parker Davis, counsel for appellant, and by Mr. Casper W. Ooms and Mr. Will Freeman, counsel for appellees, and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-sixth day of June, 1944, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 8392.

OCTOBER TERM, 1943, APRIL SESSION, 1944.

AUTOMOTIVE MAINTENANCE MACHIN-
ERY COMPANY,

Plaintiff-Appellant,
vs.

PRECISION INSTRUMENT MANUFAC-
TURING COMPANY, KENNETH R.
LARSON and SNAP-ON TOOLS COR-
PORATION,

Defendants-Appellees.

Appeal from the Dis-
trict Court of the
United States for
the Northern Dis-
trict of Illinois,
Eastern Division.

June 26, 1944.

Before SPARKS and MAJOR, *Circuit Judges*, and LINDLEY,
District Judge.

SPARKS, *Circuit Judge*. On June 15, 1942, plaintiff charged Precision Manufacturing Company, Kenneth Larson, and Walter Carlsen with infringement of United States patents to Larson, No. 2,279,792, and to Zimmerman, No. 2,283,888. By amended petition filed November 30, 1942, it further charged infringement of reissue patent No. 22,219, of which patent No. 2,269,503 was the original. These patents were issued, respectively, on April 14, May 19, and November 3, 1942, on applications filed respectively on October 1, 1938, November 22, 1937, and May 31, 1938. All of them relate to torque wrenches, and the applications were assigned to plaintiff.

The joint amended answer of the defendants, filed February 8, 1943, alleged that the defendant Larson had committed perjury by filing a false affidavit with the Commissioner in support of his patent, in an interference proceeding between that patent and the Zimmerman patent No. 2,283,888; that plaintiff knew of that perjury prior to December 23, 1940, and failed to divulge it to the proper authorities; that by reason of that knowledge it threatened the defendants with criminal prosecution unless the defendants would sign the contracts hereinafter referred to, and it promised defendants that it would suppress such evidence of perjury as it had, if defendants would sign the contracts; that under and by reason of those circumstances they signed the contracts against their will; that those contracts were unreasonable and unconscionable and their execution by defendants was procured by the inequitable conduct of plaintiff by which its hands were soiled to such an extent that its bill of complaint should be dismissed.

July 6, 1942, Snap-On Tools Corporation filed a petition for a declaratory decree relating to the controversy with respect to the Larson patent and the contract of December 20, 1940, which plaintiff and the defendants, Larson and Precision, had signed. In final form, by amended petition filed March 1, 1943, the facts therein alleged are substantially the same as set forth in the answers in the other suit. Automotive by way of answer and counterclaim set forth substantially the same allegations, and demanded practically the same relief as demanded in its original action.

By agreement, the two cases were consolidated for hearing on the sole question of inequitable conduct, and voluminous evidence was heard. At the close of the arguments, the District Court rendered an oral opinion on May 21, 1943, which is not in this record, and on July 12, 1943, it filed its special findings of facts, and rendered its conclusions of law thereon. At the same time it filed the following:

"Memorandum.

"In this case, the court rendered an oral opinion at the closing of the arguments. At the request of M. K. Hobbs, an attorney who testified in the case, the court has re-examined the record.

"It is not the intention of the court that the statements in the opinion should be construed as implying

that Mr. Hobbs had willfully given false testimony or had been guilty of professional misconduct. Accordingly, the oral opinion is withdrawn and is not to be filed as a part of the record. The Court has entered written findings and conclusions. It appears from an examination of the record that the witness Hobbs did not testify falsely; that he has adhered to the rules which govern the relations existing between attorney and client and that he was not guilty of any professional misconduct or criminal act."

Upon the conclusions of law, and consistent therewith, the court rendered judgment dismissing the complaint, the amended and supplemental complaint of the first action, and the petition, amended petitions and the counterclaims of the second action, all for want of equity. It further ordered that there should be no award for costs. From that judgment Automotive has appealed. Plaintiff and the corporate defendants, including Snap-On, which is considered as a defendant herein, will be hereafter referred to respectively by the first word of their corporate names.

Prior to 1938, Automotive was engaged in the production of a torque wrench invented by Zimmerman, one of its employees, and Snap-On was one of its customers for that wrench.

In 1938, George Thomasma, one of Automotive's trusted employees, who was fully acquainted with its wrench business and with the Zimmerman developments, secretly gave information to the defendant Larson, and they, with one Carlsen, cooperated to establish a competing business with Automotive. Snap-On was approached by Larson with respect to its taking on the wrench which had been developed by him and Thomasma from the Automotive wrench.

On October 1, 1938, Larson filed his application for his patent above referred to, by Alberts, who was then attorney for both Larson and Snap-On. The application was assigned to Snap-On under the terms of an agreement between them dated September 28, 1938.

At that time the application did not claim anything that was common to the Zimmerman and Larson wrenches, but the claims, as interpreted by the disclosure, were limited to a detail which comprised a tail-piece for operating a gauge mechanism. This, we think the evidence clearly dis-

closes, was Larson's contribution, and it was so asserted at the trial by Alberts.

On October 18, 1938, Alberts, Snap-On's patent attorney, had Larson execute for Snap-On an affidavit to the effect that no employee or ex-employee of any competitor of Snap-On had anything to do with the development of his wrench, or would be associated with Larson in the enterprise; that he alone had invented it; and that no other individual had contributed any concept or feature of it.

On October 26, 1938, Snap-On supplied Larson with a letter promising to place with him an order for a quantity of those wrenches. Larson thereupon solicited financial support for the enterprise which was calculated to take away from Automotive its wrench account with Snap-On, and in December 1938, Precision was incorporated. Larson and Thomasma were given stock for the work they had done on the wrench, and Carlsen was given stock for his services, and he also paid cash for some. Larson became president of that corporation, Thomasma was made vice-president, and Carlsen was made secretary and treasurer. The three comprised the board of directors, and Automotive's entire business from Snap-On was taken away by Precision.

Wacker, president of Automotive, had heard rumors that Thomasma, then in its employ, was one of the incorporators of Precision, and, without authority, had removed from the Automotive plant some tools and wrenches. In June 1939, he confronted Thomasma with those rumors. Thomasma denied his connection with Precision, but admitted he had removed some wrenches. Thereupon Wacker discharged him.

On August 31, 1939, the Patent Office suggested to Larson certain claims appearing in the Zimmerman application. Thereupon, Larson through Alberts copied the broad Zimmerman claims in his application; and the Patent Office declared an interference on October 11, 1939, on the counts comprising those claims copied from Zimmerman.

At the request of the Patent Office, Larson, under oath on August 5, 1940, gave the dates of his conception, disclosure, drawing, description and reduction to practice. Those dates were false and antedated Zimmerman's from one to three years.

Within a day or two after receiving a copy of Larson's preliminary statement as to his dates, Automotive author-

ized its attorney to conduct an examination of the facts alleged therein. For that purpose he employed an investigator who had performed similar work for him in years past.

Larson was required to produce his evidence first. Nine witnesses, including himself, were examined, and considerable documentary evidence and physical exhibits were received in evidence on his behalf, the hearing of which began October 24 and ended November 4, 1940. It substantiated Larson's early dates, and cross-examination failed to discredit it.

On November 3, 1940, the day before Larson closed his proofs, Thomasma and his Attorney attempted to sell Thomasma's Precision stock to Wacker, president of Automotive. He then asserted that he had given Larson the idea of developing a wrench from the Automotive wrench, but he disclosed no specific facts with respect thereto. Wacker refused the offer.

On the evening of November 7, 1940, Thomasma voluntarily went to the home of Fidler, the attorney for Automotive, and also returned there the following evening. During those times he voluntarily made a statement with respect to his and Larson's work on the wrench. It was taken down in shorthand, transcribed, and sworn to by him on November 15, 1940, and is quite voluminous. He stated therein that Larson came to his home in November 1937, where they discussed the possibility of making a tension wrench, and at that time he showed Larson a socket, a piece of drill rod and a handle; that Larson then made some patterns, and that several wrenches were made by Larson before any drawings of the wrench were made. He further stated that he made a drawing of the device in June 1938, and that it was the same drawing offered by Larson in the interference as the work of a high school boy on May 20, 1936. Automotive, after protracted efforts and considerable expense, was unable to secure anyone who would verify Thomasma's statements, but it learned from its investigation that Larson and Thomasma were then unfriendly and that Larson and Carlsen were trying to force Thomasma out of Precision.

On November 18, 1940, Automotive's attorney, Fidler, submitted to an outside attorney of good standing and large experience the question as to whether he should submit

the matter to either the Patent Office or the District Attorney. He was then and there advised not to submit it at that time to either, as the Patent Office would not consider it until plaintiff's proofs were in, and the District Attorney would not touch it so long as the priority proceeding was pending. He further advised in effect that on account of plaintiff's paucity of proof, and the former disloyalty of its only witness, it could not hope to discredit the nine witnesses whose testimony had supported Larson's priority, and that a suit for damages by the defendants might ensue. He suggested that the better way would be to take the matter up with the attorney for Larson and Snap-On.

On November 20, 1940, Fidler informed Alberts of the contents of the Thomasma affidavit, and Alberts arranged for a meeting on November 28, 1940, which was attended by himself, Fidler, Thomasma, Snap-On's president, and Automotive's president and vice-president. There Thomasma related his story in substantial accord with his affidavit, whereupon Alberts said he would withdraw as attorney for Larson if the facts, as stated by Thomasma, were true. However, he remained Larson's attorney of record in the Patent Office until December 24, 1940, when Larson's application was assigned to plaintiff, as hereinafter referred to.

On the same day, Alberts and Johnson called Larson and Carlsen in consultation, and told them the substance of Thomasma's statement. Alberts said to Larson that if the statement were true, he should get another lawyer, and he recommended any one of three attorneys, including Mr. Hobbs. At that meeting Larson reluctantly confessed that part of his testimony was false. Thereupon he and Carlsen left the room. The substance of this conversation was not disclosed to plaintiff nor to its attorney. The next day, on November 29, Larson and Carlsen employed Hobbs to settle the interference with plaintiff, and for no other purpose. They then notified him that they were willing to concede priority to plaintiff.

Earlier on the same day, Alberts had communicated with Hobbs, and told him that there was an interference between Zimmerman and Larson. He also said that Thomasma in his affidavit had attacked the originality and date of Larson's drawings, and that he was afraid they were not true, and he thought the interference suit should

be settled. Hobbs has never seen Thomasma's affidavit, nor any of the interference evidence, and no one at that time had ever told him that Larson and Carlsen had perjured themselves. Larson, Carlsen and Alberts testified that they told Hobbs of the perjury on that day, but Hobbs denied this, and the District Court tells us by this record that Hobbs told the truth. However, the substance of these conversations was never disclosed to plaintiff or its attorneys.

On the same day, Hobbs notified Fidler that he was employed to settle the interference, and suggested a conference. December 2 was agreed upon, and on that date, before plaintiff or its attorney had proposed any terms, Hobbs proposed that Larson concede priority, that plaintiff give a release for civil damages, and that it license Precision to fulfill existing contracts and commitments for wrenches. This proposal was confirmed by Hobbs' letter to Fidler of December 6, with the suggestion that no royalty be paid on orders received prior to the settlement, but that there be a continuing royalty of three per cent upon the sales price of orders received thereafter. This proposal was conditioned upon "securing back from Thomasma" his stock in Precision, concerning which the letter stated, "You may be able to be of help to us in this connection." On the same day, before receiving Hobbs' letter, Fidler notified Hobbs that the proposal was satisfactory to plaintiff, but suggested that the royalty proposal should come from Precision and Snap-On. After receiving Hobbs' letter Fidler notified Hobbs that Automotive wanted a ten per cent royalty.

Further consultations and correspondence were had by counsel for the various parties without agreement, and on December 17, Alberts, on behalf of Snap-On, notified Fidler that Larson could not settle with Automotive without Snap-On's cooperation, and that no further concessions could be made by the latter regardless of the outcome of the controversy. Thereupon, on the following day, Zimmerman served notice of taking depositions, coupled with a demand that Larson furnish his attorneys with a complete transcript of Larson's interference testimony, which had not been fully transcribed by the reporter who was employed by Alberts. Alberts then, by letter to Hobbs, attempted to substitute Hobbs as Larson's attorney in the interference proceeding, but did not

withdraw his own appearance in the Patent Office. In this letter he also advised Hobbs that Snap-On would require Larson to furnish tangible security to indemnify it before Snap-On would reassign the Larson application to Larson. On December 19, Hobbs declined to accept the appointment and notified Alberts that his demand for security from Larson was unreasonable.

On that day Automotive's attorney, by letter to Alberts, stated that the latter and his client Johnson, president of Snap-On, should realize that they were holding up the issuance of the Zimmerman patent without the slightest justification. That letter further stated:

"In the second place, we do not believe that you can divest yourself of all responsibility in this matter. You are still the attorney of record. Snap-On still has legal title to the Larson application in interference. As attorney for Snap-On and Larson, you took depositions on behalf of Larson. You instructed witnesses at opportune times—inopportune times for Automotive—not to answer certain pertinent and searching questions asked on cross-examination on behalf of Automotive. You employed the reporter. Part of the transcript is not reported correctly or fully. The reporter delayed in transcribing part of the record. You must recognize that a large part of the testimony taken on behalf of Snap-On and Larson is, to put it mildly, not the whole truth. Mr. Johnson of Snap-On has been fully advised of the situation—so far as it has developed—and I assure you that there are further developments to still be revealed. • • •"

This portion of the letter is relied upon by the defendants as implying a threat to prosecute, in order to gain an unfair advantage. It must be remembered, however, that as early as November 29, 1940, Larson and Carlsen had instructed their attorney to concede priority, and that offer was submitted to plaintiff as early as December 2. The proposal then made by Hobbs for Larson was acceptable to plaintiff, but in as much as the Larson application had been assigned to Snap-On, its consent was necessary. If given it would have settled the interference, but it was not given to plaintiff until December 24, and the delay was caused by Snap-On, and the reason therefor is quite well expressed in a letter from Alberts to his client on December 19, wherein he stated, "• • • My effort

all along has been to stiffen Larson's position so that he would not leave Snap-On . . . holding the bag—contract or no contract . . . I would like for you to submit to your general counsel the entire matter insofar as it relates to a possible suit for conspiracy with Larson to defraud Ammco. (Plaintiff.)”

On that same day Alberts replied to the letter from plaintiff's attorney and characterized it as threatening in its nature, and charged plaintiff's attorney with having used duress in his cross-examination of Larson. (This was three weeks after he had heard Larson's confession.) He further stated:

“ . . . The only evidence leading to any wrongdoing thus far was given to Mr. Johnson and myself at your office on November 28, 1940. That evidence was given by an individual who has already admitted that he has committed wrongdoings against your client, himself, and Larson. . . .

“ . . . If everything Mr. Thomasma has said could or will be proved, even then Larson is entitled to be defended by an attorney whether such be myself or some other attorney. . . .

“ . . . I certainly do not regard Mr. Thomasma as an individual of such repute that his uncorroborated words are deserving of being accepted hook, line and sinker. Present corroboration of the competent type with sufficient competency to outweigh Larson and his corroborators, and then your client is entitled to an award of priority. Beyond that I do not care to discuss any further phase of the case for the present.”

The next day, December 20, 1940, Hobbs, Alberts and plaintiff's attorneys conferred and agreed on terms of settlement. At Albert's request, separate agreements were entered into between Snap-On, Precision and Larson; Automotive, Precision and Larson; and Automotive and Snap-On. These were reduced to writing, executed, and exchanged by the attorneys on December 24, 1940. Neither plaintiff nor its attorneys had knowledge of the contents of the Snap-On-Precision-Larson agreement until about April 14, 1943. The substance of these contracts, in so far as they are here material, is as follows:

1. By the Automotive and Precision-Larson contract, Larson conceded priority to Zimmerman as to

the common subject matter disclosed in the Larson and Zimmerman applications. The Larson application was to be assigned to Automotive. Precision paid \$500 to Automotive. Precision and Larson acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave Precision the right to complete unfilled orders on hand from Snap-On to the extent of approximately 6,000 wrenches with a royalty to be paid on the excess, released Precision and Larson and their customers from liability for infringement by reason of the manufacture and use of previously sold wrenches, and gave Precision and Larson a general release as to all civil damages.

2. By the Automotive and Snap-On contract, Snap-On agreed to reassign the Larson application to Precision, and acknowledged validity of the claims of the patents to issue on the Zimmerman and Larson applications. Automotive gave to Snap-On the right to sell said approximately 6,000 wrenches then on order, released Snap-On and its customers from all liability for infringement by reason of the sale of previously sold wrenches, and gave to Snap-On a general release as to all civil damages.

3. By the agreement between Snap-On on the one hand, and Larson and Precision on the other, Snap-On reassigned to Larson and Precision whatever title Snap-On had to the Larson application, and Precision agreed to manufacture and deliver to Snap-On the approximately 6,000 wrenches then on order. Larson assigned outright to Snap-On a joint application filed by Larson and Walraven and not involved here. Snap-On advanced to Precision the \$500, which was paid to Automotive. Snap-On assented to the Automotive and Precision-Larson agreement and agreed to the cancellation of an agreement between it and Precision dated September 28, 1938, by virtue of which Snap-On had obtained title to the Larson application.

The \$500 which Snap-On turned over to Precision was paid out of the defense fund which Snap-On was withholding under their agreement of September 28, 1938. It was paid by Precision to Automotive, who in turn paid it to Thomasma for his Precision stock, which stock was then

delivered to Precision by Automotive, who retained no part of the \$500. This was done pursuant to an understanding of all the parties, and at the request of Hobbs. We gather from the record that this was due to the ill feeling between Thomasma and the defendants and the further fact that the former had tried to sell his stock to plaintiff's president on November 3, 1940. However that may be, plaintiff agreed to use its good offices to that end and was successful.

In conformity with these agreements, the Larson application was duly assigned to Automotive on December 20, 1940. Later the latter added further claims which were allowed, and the Larson patent was issued to Automotive.

Both Snap-On and Precision operated under the interference settlement agreements as to the orders therein referred to. As soon as those orders were filled, Precision began to furnish, and Snap-On began to sell, a modified wrench for which Alberts had prepared a patent application for Larson on December 26, 1940, on which day Larson executed it at Snap-On's place of business. On January 16, 1941, Snap-On entered into a new agreement with Precision under which the latter was to manufacture the new wrench for Snap-On. That is the wrench which is here charged with infringement. Snap-On has continued to deal with Larson and Precision, and Alberts has continued to represent Larson in connection with other patent applications.

On March 10, 1943, all issues had been joined with respect to the complaint, petition for declaratory judgment and the counterclaims thereunder. On March 27, 1943, at a pre-trial examination of Larson in open court, as requested by plaintiff, Larson admitted his perjury and thereupon Automotive's counsel called the court's attention to that fact. That admission, aside from the filing of the joint amended, unverified answer of the defendants on February 8, 1943, and Snap-On's third amended petition for a declaratory judgment on March 1, 1943, verified by Alberts, was the only confirmatory evidence of Thomasma's story of which plaintiff had knowledge. When on February 8, the defendants jointly filed their amended answer, it was notice to the world that Larson had committed perjury. Likewise, three weeks later, Snap-On gave the same notice when Alberts filed its amended verified petition. Prior to those dates, plaintiff and its attorneys, of course, were mor-

ally certain that Thomasma's story was true, but they did not think that the uncorroborated evidence of their traitorous former employee would be accepted as against Larson's nine witnesses. This was Albert's opinion, as expressed in his letter to plaintiff's attorneys on December 19, and also the opinion of those disinterested persons whom plaintiff's counsel consulted. Under these circumstances we think it is clear that no duty devolved upon plaintiff to report its information to either the District Attorney or the Patent Office. Certainly there was no active concealment, or misrepresentation, and after the court was informed, no duty rested upon plaintiff or its attorneys except to testify truthfully when called upon by the authorities.

It is elemental that we are bound by the material facts as found by the District Court, if they are supported by substantial evidence, otherwise we are not bound by them. The facts found by the court, with but very few exceptions, are exact copies of those requested by the defendants, and many of them are not findings of facts. The court did not find that, or before the contracts and assignment were executed, plaintiff or its attorneys knew that Larson's proofs were perjured. The defendants' requested finding No. 11 was to that effect, but the court's finding No. 11 substituted the word "insufficient" for the word "perjured."

Larson testified at his pre-trial examination that Hobbs, his own attorney, told Carlsen and himself that Fidler had told Hobbs before December 20, 1940, that if the contract was not signed Fidler would "turn loose the dogs and I would go to jail." Hobbs emphatically denied this statement and denied that he had made any threat of his own or any one else to Larson, Carlsen, Precision, Alberts or Snap-On. Moreover, Fidler and Lindsey testified that neither of them had ever made any threats to Hobbs or to any one else. Larson said Hobbs was the only one who gave him any information concerning threats and charges of perjury, and Carlsen said that all of his dealings with respect to the settlement were between himself, Larson and Hobbs, and Alberts was not in the picture. There are conflicts in the evidence with respect to this phase of the case, and they cannot be reconciled so as to believe all the testimony of these three witnesses. However, the District Court informs us that Hobbs told the truth, and it is our duty to disregard all other evidence which cannot be reconciled therewith.

Johnson, Snap-On's president, testified as to threats of prosecution made by plaintiff's attorneys. However, such threats were denied by those attorneys, and Johnson testified that neither he nor his company was coerced into signing the agreement either directly or indirectly. Moreover, Larson testified that the agreement contained somewhere near a reasonable settlement, and his attorney Hobbs said that it was a fair one, and so advised him when he signed it.

Alberts, attorney for the defendants, testified at great length with respect to practically all phases of the case. Some of his statements are quite inconsistent with others made by him. Others were categorically denied by those to whom he attributed their authorship, including Hobbs. He laid great stress upon what he interpreted as threats to prosecute Larson, which were contained in letters from plaintiff's attorney. Certainly these were not direct threats, and his interpretation of them is based purely upon inferences which we think were not warranted, and were mere products of his imagination.

The District Court did not believe the testimony of Larson, Carlsen or Alberts, or any other witness, where it contradicted Hobbs' testimony, and the latter did not disagree with the testimony of plaintiff's attorneys which related to the same facts. Some, if not all, of these first-named witnesses testified to an agreement among all the attorneys that all the evidence, incriminating or otherwise, would be destroyed. This testimony was denied emphatically by Hobbs and plaintiff's attorneys, and their denial is supported by the fact that no part of the evidence adduced was ever destroyed, and all of it is set forth in the printed record now before us, or is in the hands of the clerk of this court. Hobbs had notified plaintiff's attorneys that he desired all evidence preserved. A portion of Larson's proofs had not been transcribed and never has been, and some parts had been transcribed incorrectly. When Fidler notified Alberts of his intention to take plaintiff's proofs and of his desire to have full copies of Larson's proofs, Alberts notified his reporter of that fact, and requested him to complete his transcription and notified Fidler of that fact. They were not completed when the settlement was executed, whereupon, in compliance with Hobbs' request to preserve all evidence, Fidler notified the reporter of the settlement and requested him to deliver his transcriptions and his un-

transcribed notes to Alberts, who had employed him for the defendants. The defendants now stress this circumstance as proof of plaintiff's effort to conceal and suppress testimony. There is no merit in this contention.

In Fidler's letter to Hobbs on December 28, he said, "As to other clean-up matters that we discussed last Tuesday, I will be glad to go into the same with you whenever you are ready." Defendants urge that the words "clean-up matters" indicate a purpose to destroy the evidence. However, both Hobbs and Fidler testified that the words referred only to three matters which they had previously discussed, which were (1) a new and corrected assignment of the Larson application from Snap-On to Precision and Larson; (2) a correction in the Automotive-Precision agreement, and (3) procuring from Precision a list of the wrench orders then on hand from Snap-On. This testimony is supported not only by Hobbs' letters to Fidler on December 30, and January 4, but by the District Court's memorandum of July 12.

We are convinced that the contradicted testimony of Larson, Carlsen, Alberts and Johnson has no probative value and cannot be considered as substantial evidence in the light of this record.

The defendants further contend that the Larson application should have been a joint application by Larson and Thomasma. This record does not warrant such conclusion, and we think our conclusion in this respect is strongly supported by the facts that the application was filed on October 1, 1938, by Alberts, the attorney for Larson and Snap-On, and it was assigned to Snap-On. The defendants and Alberts were fully informed as to the contents of the Thomasma affidavit on November 28, 1940, which fully stated his connection with the Larson disclosure. The defendants continued to operate under the pending application, and raised no question as to Thomasma's joint authorship of Larson's disclosure until March 1, 1943, when Snap-On, by Alberts, filed its amended petition for a declaratory decree. This was more than three years after they had full knowledge of the contents of the Thomasma affidavit, and more than two years after Larson had secretly confessed his perjury to them.

The defendants further contend that the claims added to the Larson application after its assignment to plaintiff, which claims were subsequently allowed by the examiner,

were not within the purview of the parties' contract. The examiner is not bound by contractual limitations of the parties as to the additions or rejections of claims. Here, however, the contract is silent on the subject, and we know of no reason why proper additional claims may not be allowed to the assignee under the name of the inventor as well as to the inventor before assignment. Whether the examiner erred in allowing one or more of the additional claims, or whether any of the claims are valid are questions which are not before us on this appeal. The patent is presumed to be valid, and we hold that additional claims were not precluded by the contract of the parties. Nor did their allowance render the contract between plaintiff and the defendants an unconscionable one.

We are convinced that the findings of fact, with respect to plaintiff, are not supported by substantial evidence, and that the conclusions of law are not supported by the findings. The court's ruling in dismissing plaintiff's complaint and its supplemental complaint in the infringement suit, and its counterclaims in defendants' suit for a declaratory judgment is reversed. As to all other matters the decree is affirmed. The cause is ordered remanded for further proceedings not inconsistent with this opinion.

Endorsed: Filed June 26, 1944. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-sixth day of June, 1944, the following further proceedings were had and entered of record, to-wit:

Monday, June 26, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

8392

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,
Defendants-Appellees.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this Cause appealed from be, and the same is hereby, reversed as to the court's ruling in dismissing plaintiff's complaint and supplemental complaint in the infringement suit, and its counter claims in defendants' suit for a declaratory judgment: As to all other matters the judgment is affirmed, and this cause is hereby remanded to the said District Court for further proceedings, not inconsistent with the opinion of this Court.

It is further ordered that the costs of this appeal be recovered by appellant.

And afterwards, to-wit: On the eighth day of July, 1944, there was filed in the office of the Clerk of this Court, an Application for Stay of Mandate under Rule 25 of the rules of this Court, which said application is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Automotive Maintenance Machinery Company,

Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,

Defendants-Appellees.

No. 8392.

APPLICATION FOR STAY OF MANDATE UNDER
RULE 25.

Now come Defendants-Appellees and make this application for stay of mandate herein under Rule 25.

Defendants-Appellees represent that the Clerk has been instructed to prepare the record herein for transmittal to the Supreme Court of the United States and a petition for a writ of certiorari is in preparation.

Wherefore, application is made that the mandate herein be stayed to and including August 15, 1944, and if the petition for a writ of certiorari is then on file in the United States Supreme Court, until disposition thereof by that Court.

Respectfully submitted,

Casper W. Ooms,

Attorney for Precision Instrument Manufacturing Company and Kenneth R. Larson.

Will Freeman,

Attorney for Snap-On Tools Corporation.

Chicago, Illinois,

July 7, 1944.

Ordered Accordingly:

United States Circuit Judge.

AFFIDAVIT OF SERVICE.

State of Illinois }
County of Cook } ss.

Casper W. Ooms being first duly sworn deposes and says that he has served this application and notice upon attorneys for Plaintiff-Appellant, by mailing two copies thereof to Davis, Lindsey, Smith & Shonts, 332 S. Michigan Avenue, Room 1901, Chicago 4, Illinois, this 7th day of July, 1944.

Casper W. Ooms.

Subscribed and sworn to before me this 7th day of July, 1944.

(Seal) Clara D. Witt,
Notary Public.

Endorsed & Filed July 8, 1944. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the tenth day of July, 1944; the following proceedings were had and entered of record, to-wit:

Monday, July 10, 1944.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Automotive Maintenance Machinery Company,

Plaintiff-Appellant,

8392

vs.

Precision Instrument Manufacturing Company, Kenneth R. Larson and Snap-On Tools Corp.,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellee, it is ordered that the issuance of the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed, excepting briefs of counsel and motions and orders extending time for filing briefs, in:

Cause No. 8392.

Automotive Maintenance Machinery Company,
Plaintiff-Appellant,

vs.

Precision Instrument Manufacturing Company, Kenneth
R. Larson and Snap-On Tools Corp.,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, A. D. 1944.

(Seal) (signed) Kenneth J. Carrick
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 16, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.